United States Court of Appeals for the Second Circuit



APPENDIX

ORIGINAL WITH PROCE WITH SERVICE

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

In the Matter of

W. T. GRANT COMPANY,

Debtor.

ZARTLEG DEVELOPMENT CORP. ("ZARTLEG"),
Appellant,

W. T. GRANT COMPANY,
THE CREDITORS' COMMITTEE,
CINNAMINSON SHOPPING CENTER, INC.,
CHANNEL COMPANIES, INC.,

Appellees.

ON APPEAL FROM A MEMORANDUM DECISION AND ORDER OF THE UNITED STATÉS DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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(For further appearances, please see reverse side of cover.)



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PAGINATION AS IN ORIGINAL COPY

	PAGE
DOCKET ENTRIES	A-1
ORDER TO SHOW CAUSE DATED DECEMBER 2, 1975	A-8
APPLICATION OF DEBTOR-IN-POSSESSION FOR ORDER TO SHOW CAUSE AUTHORIZING ASSIGNMENT OF LEASES OF STORE PREMISES	A-12
EXHIBIT A TO APPLICATION - SCHEDULE OF "INTERESTED PERSONS"	A-17
EXHIBIT B TO APPLICATION - TERMS AND CONDITIONS OF SALE	A-28
EXHIBIT C TO APPLICATION - ASSIGNMENT AND ASSUMPTION AGREEMENT	A-29
EXHIBIT D TO APPLICATION - BILL OF SALE	A-31
NOTICE OF SETTLEMENT OF ORDER	A-33
ORDER PRESENTED FOR SETTLEMENT	A-35
EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE	A-38
EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT	A-41
ORDER TO SHOW CAUSE DATED DECEMBER 24, 1975	A-44
AFFIDAVIT OF DONALD R. LEVIN, ESQ., FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO APPLICATION OF DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE AND IN SUPPORT OF APPLICATION TO OPEN SALE OF LEASES FOR FURTHER BIDS	A-45
AFFIDAVIT OF ROBERT C. GRANT, FOR ZARTLEG DEVELOPMENT CORP., IN OPPOSITION TO APPLICATION TO DENY CONFIRMATION OF SALE AND ASSIGNMENT OF LEASES AND TO OPEN SALE OF LEASES FOR FURTHER BIDS	A-48
EXCERPTS FROM TRANSCRIPT OF DECEMBER 11, 1975	A - 55

	PAGE
TRANSCRIPT OF DECEMBER 30, 1975 PROCEEDING BEFORE JUDGE GALGAY	A-74
TRANSCRIPT OF DECEMBER 31, 1975 PROCEEDING BEFORE JUDGE GALGAY	A-116
ORDER DATED DECEMBER 31, 1976 GRANTING APPLICATION OF DEBTOR AND DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE BETWEEN CINNAMINSON SHOPPING CENTER, INC. AND GRANT	S
EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE	A-143
EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT	A-145
ORDER DATED DECEMBER 31, 1975 GRANTING APPLICATION OF DEBTOR AND DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE BETWEEN WOODCREST HOMES, INC. AND GRANT	2
EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE	A-152
EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT	A-154
NOTICE OF MOTION TO REARGUE AND MODIFY ORDERS GRANTING SALE AND ASSIGNMENT OF LEASES	A-157
AFFIDAVIT OF ROGER L. ZISSU, ESQ., FOR ZARTLEG DEVELOPMENT CORP., IN SUPPORT OF MOTION	A-159
AFFIDAVIT OF SOLOMON ROGOFF, FOR ZARTLEG DEVELOPMENT CORP., IN SUPPORT OF MOTION	A-164
EXHIBIT A TO MOTION - ORDER PRESENTED TO COURT BY ZARTLEG DEVELOPMENT CORP. (reproduced herein at pages A-35 - A-37)	A-170
EXHIBIT B TO MOTION - SCHEDULE OF EXPENDITURE IN PREPARING NEW STORES	A-171

	PAGE
AFFIDAVIT OF MARK ABRAMOWITZ, ESQ., FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO MOTION	A-172
AFFIDAVIT OF LOUIS SLATER, FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO MOTION	A-180
TRANSCRIPT OF JANUARY 26, 1976 PROCEEDING BEFORE JUDGE GALGAY	A-184
MEMORANDUM OPINION OF JUDGE GALGAY DATED MARCH 1, 1976	A-208
NOTICE OF APPEAL TO DISTRICT COURT DATED JANUARY 7, 1976	A-213
EXHIBIT A TO NOTICE OF APPEAL - ORDER DATED DECEMBER 31, 1976 GRANTING APPLICATION OF DEBTOR AND DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE BETWEEN CINNAMINSON SHOPPING CENTER, INC. AND GRANT AND EXHIBITS ANNEXED THERETO (reproduced herein at pages A-139 - A-147)	A-215
NOTICE OF APPEAL TO DISTRICT COURT DATED JANUARY 7, 1976	A-216
EXHIBIT A TO NOTICE OF APPEAL - ORDER DATED DECEMBER 31, 1976 GRANTING APPLICATION OF DEBTOR AND DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE BETWEEN WOOD-CREST HOMES, INC. AND GRANT AND EXHIBITS ANNEXED THERETO (reproduced herein at pages A-148 - A-156)	A-218
EX PARTE ORDER DATED MARCH 16, 1976 EXTENDING TIME TO FILE BRIEFS AND ADJOURNING APPEAL	A-219
AFFIDAVIT OF ROGER L. ZISSU, ESQ., FOR ZARTLEG DEVELOPMENT CORP., IN SUPPORT OF EX PARTE ORDER	A-220
EXHIBIT A TO ZISSU AFFIDAVIT - ORDER AND STIPULATION OF SUBSTITUTION OF ATTORNEYS	A-222

	PAGE
EXHIBIT B TO ZISSU AFFIDAVIT - NOTICE FROM DISTRICT COURT	A-223
NOTICE OF APPEAL TO DISTRICT COURT DATED MARCH 4, 1976	A-224
MEMORANDUM DECISION AND ORDER OF JUDGE WYATT DATED MAY 17, 1976	A-226
NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT	A-229

DOCKET ENTRIES

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10/2 /75 10/3/75	Filed NOTICE Of court for an or sent Chapter X at 10:30 A.M.	F MOTION, rder in action of the control of the cont	of Bad gudica hapter 06. f.	er and te W.T. X-128.	Bader Grant RET		to move the from its pre
10/8/75	Copy to Bank. Filed Order to entered herein on the pattof to October 10, 197	Judge. Show Caus dismissin the Distri 5 at 2:0	e, why g, for ct Jud PiM. i	an ord	er sh ck of the U	al ISI	1 not be urisdiction

DOCKET ENTRIES

Filed Debtor's Memorandum of Law in support of Motion to Transfer Chapter XI proceedings to Chapter X and 10/8/75 appoint a receiver. Sub By: Wachtell. Lipton, Rosen & Katz. f/ Filed MEMORANDUM PECISION AND ORDER, #43249, the motion 10/10/75 to convert the Chapter Miproceedings into Chapter V and/ or to appoint a receiver is dismissed without prejudice as jurisdictionally defective. So ordered Cannella, dated 10/10/75 (Copy to Bank Judge) WACHTELL LIPTON ROSEN & KATZ 299 Perk Avenue, New York, N.Y. 10021. Filed NOTICE OF APPEAL to the USCA by the Independent 10/14/75 Investor Protective League and forris L. Lewy, from an order made by Hon. Judge Cannella dated 10/10/75 dismissing the proceedings brought by the petitioners to transfer this abankruptcy from Chapter XI to Chapter X of the Bankruptcy Act Mailed Notices. Filed Affirmation in Opposition to order to Show Cause to 10/20/75 dismiss motion for appointment of receiver or to transfer proceedings to Chapter Xof the Bankruptcy Act. Sub By; I. Walton BADER. Filed NOTICE OF APPEAL to the USDC from the of John J. Galgay, Booky Judge datedd11/17/75, by N.Y. Temephone Co. RET. 2/10/75, 12/29/75 at 10:30 A.M. in room 506. f. Filed Designation of Contents for inclusion in the record 12/29/75 on appeal and statement of the issues to be presentadon appeal, Filed NOTICE OF APPEALto USDCby Baltimore Gas and Electric, 12/31/75 from the Order of Bank Judge Galgay, dated 11/17/75. RET: 2/10/76 at 10:30 A.M. in room 506. f. Filed Designation of Contents of record on appeal and statement 12/31/75 of issues. f. Filed transcripts of testimony dated 10/10/75. 1/6/76 Filed BRIEF OFHALL-TATE MFG. CO., in opposition to order to 1/6/76 Show Cause of W.T. Grant Co., Debtor-in-Possission. f. Filed AFFIRMATION IN OPPOSITION, Gof Roy E. Pomerantz.f. 1/6/76 Filed BRIEF OF BALTIMORE GAS AND ELECTRIC CO., on appeal from 1/8/76 order of Bankruptcy Judge limting deposit for continued service.f. Filed ORDER that the said application be and the same hereby 1/12/76 is granted to the extent that the lease to the premises be and the same hereby is rejected and disaffirmes as as 12/9/75 etc. So Ordered Galgay, Bank. Judge dated 12/22/75. f. Filed Stipulation and Order that the hearing on the appeal 1/15/76 is adjourned to 3/23/76. So ordered Bonsal, J. dated 1/13/76.f. Filed STIPULATION & ORDER , extending time to serve and file its 1/21/76 brief till 1/27/76. etc. So ordered Metzner, J. dated 1/19/76. Filed MEMORANDUM of Respondent-Appellee W.T. GRANT COMPANY. 1/27/76 (RE: Baltimore Gas and Electric Co.)f. Filed REPLY BRIEF OF BALTIMORE GAS AND ELECTRIC CO. 2/4/76

PETITIONER-APPELLANT. By LeBoeuf, Leiby & MacRae.

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Page 3

DOCKET ENTRIES W.T. GRANT CO.

	LOCKET NUMBER
DATE .	PROCEEDINGS
2/20/76	Filed ORDER OF DISCONTINUANCE, So ordered Motley, J. dated 2/20/76. Copy to Bank Judge. (Baltimore Gas)
2/20/76	Filed ORDER that the order of Judge Galgay of 11/17/76, is affirmed. So Ardered Motley, J. dated 2/20/76 (Baltimore Gas) Copy to Bank Judge.
2/20/76	Filed OPINION # 43920, order appealed from is affirmed in all respects. So ordered Motley, J. dated 2/20/76. (Copy to Bank Judge). (Baltimore Gas) M/N; Wachtel Lipton Rosen & Katz, 299 Park Ave, N.Y.N.Y. 1001 LeBoeuf Lamb Leiby & Mac Rae & Judge Galgay, 40 Center Street, N.Y.N.Y.
3/3/76	Filed Notice of Appeal to District court by ZARTLEG DEVELOPMENT CORP., From order of Bkcy. Judge on
3/3/76	12/31/75, Ret:4/13/76 at 10:30 AM in Rm.506. (Cinnamin-Son Shopping Center, Inc. f. Filed Notice of Appeal to District court by ZARTLEG DEVELOPMENT CORP., From order of Bkcy. Judge on 12/31/75, Ret: 4/13/76 at 10:30 AM in Rm. 506. (Wood-
3/3/76	crest Homes, Inc.) f. Filed Designation of contents for Inclusion in the Record on Appeal & Statement of Issues. f.
3/3/76	Filed Counterdesignation of Issue Presented On Appeal. f.
3/3/76	Filed Notice of Appeal to USCA by BALTIMORE GAS & ELECTRIC CO., from opinion of Motley J. dated 2/20/76. m/n. f.
3/8/76	Filed Consolidated Designation of Contents of Record on Appeal.
3/15/76	Filed ORDER adjourning the appeal to 5/25/76. So ordere Pollack, J. dated 3.9.76, f.
3/16/76	Filed ORDER adjourning the appeal to 5/4/76. So ordered, Griesa, J. dated 3/16/76. f.
3/22/76	Filed NOTICE OF APPEAL to the District Court by Zartleg, from the order the of Bankruptcy Judge dated 3/1/76. RET: 5/4/76 in room 506 at 10:30 A.M. f.
3/22/76	FiledDesignation of Contents for Inclusion in the record on appeal and Statement of Issues. f.
3/22/76	Filed REQUEST TO CLERK TO Certify and Transmit Record.
3/31/76	Filed BRIEF of Appellant Zartleg Development Corp. f.
4/7/76	Filed STIPULATION withdrawing appeal to the USCA. True Copy Signed, A. Daniel Fusaro.
4/9/76	Filed NOTICE of Original record being transferred to
FORM BK 74-E	Continued on page 4 UNITED STATES DISTRICT COURT !!

DOCKET ENTRIES

W.T. GRANT Co. Inc.

DATE	PROCEEDINGS	
4/15/76	Filed BRIEF Submitted on behalf of the Channel Companies, Inc. by Parker, Chapin & Flattau. f.	
4/16/76	Filed BRIEF of Trustee in Opposition To Appeal by Zartleg Development Corp. f.	
4/7/76	Filed STIPULATION WITHDRAWING THE APPEAL TO THE USCA, True Copy, Fusaro, Clerk, M/N: BADER & BADER, 270 Madison Ave, N.YN.Y., Wachtel Lipton Rosen & Katz, 299 Paek Ave New York, N.Y. & Whitman & Ransom 522 Fifth Ave, N.Y.N.Y.	
4/20/76	Filed ORDER (copy) directing funds to be deposited in the District Court's Account. So ordered Galgay, Bkcy J. dated4/9/76.	
4/23/76	Filed REPLY BRIEF of Appellant Zartleg Development Corp.f.	
4/30/76	Filed Notice of Motion to dismiss order to Show Cause. Ret: 4/29/76 at 11:30A.M. in room 234. f.	
4/30/76	Filed MEMO-ENDORSED on back of Notice of Motion to dismiss order to Show Cause. Motion denied following argum so ordered Mac Mahon, J. dated 4/29/76. (Copy to Bank Judge)	ent
5/3/76	Filed NOTICE OF APPEAL, to the USCA by PHOENIX MUTHAL INSURANCE CO., from the order of District Judge Mac Mahon, dated 4/29/76. M/N: f.	
5/13/76	filed NOTICE OF APPEAL to the USDC by Frances Swinick from an order of Galgay, J. Bkey. RET: 6/29/76 at 10:30 AM in room 506.f.	
5/13/76	Filed Contents and Statement of Issues on Appeal.f.	
5/17/76	Filed ORDER affirming the District Court's decision. (Zartleg). So ordered Wyatt, J. dated 5/17/76. Copy to Bank Judge. M/N; Wachtell Lipton Rosen & Katz 299 Park Avenue, N.Y.N.Y., Weil Gotshal & Manges 767 Fifth Ave N.Y.N.Y., Taenzer & Friedman Rt. 130 & Riverton Rd. Cinnaminson, N.J. 08077, Zissu Lore Halper & Robson 450 Park Ave, N.YNY., Ballon Still & Itzler 1180 Ave of the Amer. N.Y.N.Y.&Parker Chapin & Flattau 530 Fifth Ave. N.Y.N.Y.	
6/3/76	Filed ORDER TO SHOW CAUSE why an order granting relief in the Nature of Mandamus should not be entered. RET: 6/8/76 at 10:15 AM in room 506. f.	
6/3/76	Filed AFFIDAVIT of Jon Moss in support of motion for relief in the nature of Mandamus. f.	•
6/3/76	Filed NOTICE OF AFPEAL to the USCA from the Memorandum Decision and Order of the District Court Wyatt, J., dated 5/17/76, by Zartleg Development Corp.M/N: f.	
5/28/76	Filed ORDER (True Copy) that said petition be and it hereby denied. Signed A. D. Fusaro, Clerk. M/N; Hahn Hessen Margolis & Ryan., 350 Fifth Ave., N.YNY.	

PAGE 5

DOCKET ENTRIES

W.T. GRANT CO, INC.

DATE .	PROCEEDINGS
	Michael Landers, US Att'y One St. Andrews Plaza N.Y.N.Y. 10007, T. Gewertz, Wachtell Lipton Rosen 299 Fark Ave, Hon. Lloyd F. MacMahon, 40 Foley Sq, N.Y.N.Y. & Hon J.J. Galgay 40 Foley Sq. N.Y.N.Y. 10007.
6/4/76	Filed ORDER (true copy) of USCA, that the Appeal from the order of the District Court is hereby dismissed. Signed A. Daniel FusaroClerk. 5/27/76 m/n Wachtell, Lipton, Rosen & Katz, Esqs. 299 Park Ave. NYC Zissu, Lore Halper & Robson, Esqs. 450 Park Ave. NYC Hahn, Hessen, Margolis & Ryan 350 Fifth Ave. NYC
6/7/76	Filed STIPULATION & ORDER that the appeal to the USDC by the N.Y. Telephone Co., os withdrawn. So ordered Brieant, J. dated 6/4/76. M/n; George E. Ashley 1095 Ave of the Americas, N.Y.N.Y. 10036, Wachtel Lipton, Rosen & Katz, 299 Park Ave, N.Y.N.Y. 10017 & Judge Galgay 40 Foley Sq. N.Y.N.Y. 10007 Copy to Bank Judge
6/21/76	Filed NOTICE OF APPEAL to the USDC by Liebman Eulau, Robinson & Perlman, from orders dated 11/14/75/& 5/13/76 RET: 8/3/76 at 10:30 AM in room 506.f.
6/21/76	Filed Designation of items to by included in record on appeal and Statement of Issues. f.
7/6/76	Filed MEMO ENDORSED on back of the Notice if Appeal. The order of Bankruptcy Judge Galgay is Affirmed. So ordered Knapp, J. dated 7/1/76. Copy to Bank Judge. M/N; FRANCES SWINICK, 3 High St., New Brunswick, New Jersey, 08901, Wachtell Lipton Rosen & Katz, 299 Park Ave, N.YN.Y. 10017 & Judge Galgay, 40 Foley Sq N.Y.N.Y.
7/7/76	Filed ORDER extending time for appellant, Liebman Eulau
	etc., to serve and file its appellant's brief . So order
7/8/76	etc., to serve and file its appellant's brief. So order Ward, K. dated 7/6/76. f. Filed BRIEF FOR APPELLANT, Special Counsel for debtor in possession. Sub By: Liebman Eulau Robinson & Perlman
7/8/76 7/9/76	Ward, K. dated 7/6/76. f. Filed BRIEF FOR APPELLANT, Special Counsel for debtor
	ward, K. dated 7/6/76. f. Filed BRIEF FOR APPELIANT, Special Counsel for debtor in possession. Sub By: Liebman Eulau Robinson & Perlman Filed ORDER TO SHOW CAUSE why Appeal should not be dismissed, or alternatively, why Appeal should not be expedited. Ret: 7/13/76 at 10:30 A.M. Room 506. So Ordered Ward, J. Dated 7/8/76 f.
7/9/76	ward, K. dated 7/6/76. f. Filed BRIEF FOR APPELLANT, Special Counsel for debtor in possession. Sub By: Liebman Eulau Robinson & Perlman Filed ORDER TO SHOW CAUSE why Appeal should not be dismissed, or alternatively, why Appeal should not be expedited. Ret: 7/13/76 at 10:30 A.M. Room 506. So Ordered Ward, J. Dated 7/8/76 Filed NOTICE OF APPEAL to USDC by McLeod Stedman Ltd. from the order of Bkcy. Judge Galgay. Dated: 6/22/76 Ret: 8/24/76 at 10:30 Room 506. f. Filed Designation of contents of Record on Appeal
7/9/76 7/12/76	ward, K. dated 7/6/76. f. Filed BRIEF FOR APPELLANT, Special Counsel for debtor in possession. Sub By: Liebman Eulau Robinson & Perlman Filed ORDER TO SHOW CAUSE why Appeal should not be dismissed, or alternatively, why Appeal should not be expedited. Ret: 7/13/76 at 10:30 A.M. Room 506. So Ordered Ward, J. Dated 7/8/76 f. Filed NOTICE OF APPEAL to USDC by McLeod Stedman Ltd. from the order of Bkcy. Judge Galgay. Dated: 6/22/76 Ret: 8/24/76 at 10:30 Room 506. f. Filed Designation of contents of Record on Appeal

DOCKET ENTRIES W.T.GRANT CO.,

T A	C 22	2
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DATE	PROCEEDINGS
7/13/76	Filed Affidavit of Donald S. Rogers in opposition to trustee's motion to dismiss or expedite this appeal.
7/13/76	Filed MEMORANDUM of Morgan Guaranty Truat Co., in support of Trustee's Motion regarding the appeal from the order of the Bankruptcy Court entered 6/22/76 authorizing the sale of Zeller's Securities. Sub By: Davis POLK & WARDWELL. f.
7/13/76	Filed Trustee's Memorandum in support of Motion to dismiss appeal Sub By: Weil Gotshal & Manges. f.
7/19/76	Filed STIPULATION suggesting withdrawal or unconditional etc. So ordered Ward, J. dated 7/16/76. f.
7/16/76	Filed NOTICE OF APPEAL to the USCA by Frances Swinick from the order by Judge Knapp. M/N f.
7/23/76	Filed MEMO ENDORSED on back of Order to Show Cause dated 7/9/76. Motion withdrawn as most. So ordered Ward, J. dated 7/22/76. Copy sent to Bkcy. Judge.
7/22/76	Filed Notice of Withdrawal of Appeal (Maxleod Stedman Ltd) Granted. So ordered Ward, J. dated 7/22/76. Copy to Bank Judge. M/N; Weil Gotshal & Manges, 767 5th Ave, Nyc, Webster & Sheffield 1 Rockefeller Plaza, NYC. 10020, Hahn Hessen Margolis & Ryan, 350 5th Ave, NYC, Popper & Popper 350 5th Ave, NYC, Trubin Sillcocks, Edelman & Knapp, 375 Park Ave, NYC, Davis Polk & Wardwell 1 Chase Manhattan Plaza NYC. & Debevoise Plimpton Lyons & Gates, 299 Park Ave, NYC.
7/23/76	1
7/30/76	Filed Answer and Affidavit in opposition to Mandamus Petition, of Theofore Gewertz.
7/30/76	Filed MEMC ENDORSED back of Affidavit filed 6/3/76. Petitioners reques at this court order Bankruptcy Judge Galgay to rule a motion to dismiss their complaint is denied. so redered Gagliardi, J. dated 7/29/76.
7/30/76	Filed NOTICE OF APPEAL, to the USDC by Barbara Lynn of Forest Avenue, Inc. and Majors Discount Stores, Inc., from the order of the Bankruptcy Court dated 5/20/76. RET: 9/14/76 at 10:30AM in room. f.
7/30/76	Filed Designation of Contents of Record on appeal and Statement of issues. f.
7/30/76	Filed STIPULATION & ORDER extending time for filing of Brief of Appellee and Adjourning hearing on appeal. Adjourning the appeal to 9/21/76. So ordered Conner, J. dated 9/21/76.f.
₩: 	CONTINUED ON PAGE 7
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DOCKET ENTRIES

PAGE 7

W.T.GRANT CO.

	LOCKET NUMBER
DATE	PROCEEDINGS
8/10/76	Filed True Copy of an order of the USCA (Baltimore Gas) dismissing the appeal as moot. Clerk of USCA 7/16/76. M/N; LE BOEUF LAMB LEIBY & MACRAE, 140 B'way & Wachtell Lipton Rosen & Katz, 299 Park Avenue, New York, N.Y. Copy to Bank Judge.
•	

ORDER TO SHOW CAUSE DATED DECEMBER 2, 1975 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In re

In Proceedings for an Arrangement

W.T. GRANT COMPANY,

No. 75 B 1735

Debtor-

ORDER TO SHOW CAUSE

Upon the annexed application (the "Application") of W.T.

Grant Company, as debtor-in-possession, dated December 2,-1975,

and no adverse interest having been represented and sufficient

cause appearing therefor, it is

ORDERED, that each of the persons identified in columns two and three of Exhibit A to the Application ("Interested Persons") and all other interested parties show cause before the undersigned Bankruptcy Judge in Room 234 of the United States Court House, Foley Square, New York, New York on the // day of December, 1975, at 2 o'clock in the fincon of that day, or as soon thereafter as counsel may be heard, why an order should not be entered herein:

(1) authorizing W.T. Grant Company, as debtor and debtor-in-possession (collectively: "Grant") to sell, assign and transfer to the "High Bidder" identified in column 6 of said Exhibit A opposite the name of such Interested Person, for the total purchase price set forth in column 7 of said Exhibit A, or to any other person making a higher and better offer

ORDER TO SHOW CAUSE DATED DECEMBER 2, 1975 therefor, any and all of Grant's right, title and interest in and to the lease identified in columns 4 and 5 of said Exhibit A opposite the name of such Interested Person, and, where so indicated on said Exhibit A, any and all of Grant's right, title and interest in and to the trade fixtures and equipment located in the store identified in column one of said Exhibit A opposite the name of such Interested Person, with such sale, assignment and transfer to be upon the terms and conditions set forth on Exhibit B to the Application and upon such other terms and conditions as may be prescribed by the Court and to be evidenced by the Assignment and Assumption Agreement in the form annexed to the Application as Exhibit C and, where appropriate, the Bill of Sale in the form annexed to the Application as Exhibit D;

- (2) authorizing W.T. Grant Company, as Debtor-in-Possession, to assume each lease identified on said Exhibit A immediately prior to the consummation of the aforesaid sale, assignment and transfer;
- (3) declaring that upon the consummation of the aforesaid sale, assignment
 and transfer Grant shall have no liability
 for any breach or breaches of each such
 lease occurring on and after said date of
 consummation;

ORDER TO SHOW CAUSE DATED DECEMBER 2, 1975

(4) directing each of the lessors identified in column two of the Application to forthwith execute and deliver to Grant an estoppel certificate certifying that the lease of said lessor is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications) and stating (x) whether or not there is any default in the performance of any covenant, agreement or condition in said lease and, if so, specifying such default and (y) whether said lessor will exercise its right, if any, to terminate its lease by reason of the assignment thereof, failing which said lessor shall be deemed to have waived any and all defaults under its lease arising prior to the date of consummation of said sale, assignment and transfer and such right of termination, if any; and

(5) declaring that Grant shall have no liability arising from use and occupation of the premises demised under each such lease for the month of December, 1975 and thereafter; and it is further

ORDERED, that the mailing by Grant to the Interested

Persons and to the other persons listed in columns 6 and 8 of said

ORDER TO SHOW CAUSE DATED DECEMBER 2, 1975

Exhibit A and to co-counsel for the statutory Creditors' Committee of a copy of this Order to Show Cause and of the Application on or before Decames 3 , 1975 shall be deemed sufficient service of this Order to Show Cause and of the Application.

Dated: New York, New York December 1975

Bankruptcy Judge

A-12

APPLICATION OF DEBTOR-IN-POSSESSION FOR ORDER TO SHOW CAUSE AUTHORIZING ASSIGNMENT OF LEASES

OF STORE PREMISES UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In re

In Proceedings for an Arrangement

W.T. GRANT COMPANY,

No. 75 B 1735

Debtor.

APPLICATION FOR ORDER TO SHOW CAUSE AUTHORIZING ASSIGNMENT OF LEASES OF STORE PREMISES

TO THE HONORABLE JOHN J. GALGAY, BANKRUPTCY JUDGE:

The application of W.T. Grant Company ("Grant"), as dentor-in-possession, respectfully represents:

- 1. On October 2, 1975, Grant filed with this Court a petition for an arrangement under Section 322 of Chapter XI of the Bankruptcy Act and Rule 11-6 of the Chapter XI Rules. Pursuant to an order of this Court dated October 2, 1975, Grant was authorized to continue to operate its business and manage its properties as debtor-in-possession.
- 2. Prior to the filing of the petition herein, W.T. Grant Company leased and operated approximately 1,070 stores located in 40 states. Pursuant to orders of this Court dated October 20, 1975, October 24, 1975 and November 7, 1975, Grant was authorized to conduct going out of business sales in and to surrender possession of 579 stores. Promptly following the entry of each of the aforesaid orders, Grant embarked upon a program to assign the leases of the stores covered by the order to parties willing to pay a cash consideration for the assignment and to assume the obligations under the leases. Grant has been in oral or written communication with at least 200 developers, brokers,

APPLICATION OF DEBTOR-IN-POSSESSION FOR ORDER
TO SHOW CAUSE AUTHORIZING ASSIGNMENT OF LEASES
OF STORE PREMISES
retailers and other potential users of the stores and has received
offers to purchase certain of the leaseholds.

3. Grant has received from each person identified in column six of Exhibit A hereto an offer to purchase for the amount set forth in column seven of Exhibit A hereto opposite the name of such person any and all of Grant's right, title and interest in and to the appropriate lease identified in columns four and five of said Exhibit A, and, where so indicated on Exhibit A, any and all of Grant's right, title and interest in and to the trade fixtures and equipment located in the store premises covered by the appropriate lease. In those cases where the bid includes an offer to purchase trade fixtures and equipment, the value of the trade fixtures and equipment on Grant's books is set forth in column ten on Exhibit A. The provisions of each lease relating. to rental, term and renewal options are summarized in column five of Exhibit A. Each lease provides that it is assignable by the lessee and contains no provision for the lessor's consent to such assignment, except that the leases marked by an asterisk on Exhibit A contain a provision granting to the lessor the right to cancel the lease after a notice of intended assignment is given by Grant. Grant's records indicate that certain of the leases have been assigned by the lessor thereof as security for the benefit of the mortgagees identified in column three of Exhibit A. Grant has also received from the persons identified in column eight of Exhibit A a bid to purchase the lease identified in columns four and five of Exhibit A set opposite the names of such persons but Grant believes that the bid of the person identified in column six of Exhibit A constitutes the highest and best offer in each instance.

4. Grant is willing to accept the offer of each person identified in column six of Exhibit A upon the terms and conditions

set forth in Exhibit 3 hereto and upon such other terms and conditions as may be prescribed by the Court, to assign the appropriate lease to such person without any recourse to Grant pursuant to the form of Assignment and Assumption Agreement annexed hereto as Exhibit C and, where so indicated on Exhibit A, to sell the trade fixtures and equipment located in the subject premises to such person pursuant to the form of Bill of Sale annexed hereto as Exhibit D.

The last sentence of Section 70b of the Bankruptcy Act provides: "A trustee who elects to assume a contract or lease of the bankrupt and who subsequently, with the approval of the court and upon such terms and conditions as the court may fix after hearing upon notice to the other party to the contract or lease, assigns the contract or lease to a third person, is not liable for breaches occurring after the assignment. In view of such provisions, Grant is seeking authority to assume each lease in connection with the assignment thereof. Such assumption would be effective only immediately prior to the assignment of the lease. Accordingly, Grant is also seeking the declaration of this Court that Grant shall have no liability for any breach or breaches of a lease occurring on and after the date of assignment thereof. Grant is aware, however, that its assumption of a lease may require it to cure any pre-assignment defaults which may have occurred under the lease, and to pay sums for utility services, maintenance charges and the like which might but for such assumption constitute the subject of a general pre-petition claim of the lessor. Thus, it may not be in Grant's best interests to assume a particular lease. Accordingly, Grant will prior to the return date of the pre-fixed Order to Show Cause examine its records to determine the extent of such liabilities and make a

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APPLICATION OF DEBTOR-IN-POSSESSION FOR ORDER TO SHOW CAUSE AUTHORIZING ASSIGNMENT OF LEASES OF STORE PREMISES A-15

presentation to the Court as to whether it would be in Grant's best interests to withdraw Grant's application for authority to assume any one or more of the leases.

- 6. Inasmuch as each person identified in column six of Exhibit A is willing to pay a substantial sum for the assignment of the lease for which it has submitted a bid, Grant is requesting that this Court issue an order directing the lessor under each lease to furnish an estoppel certificate certifying as to the good standing of the lease, stating whether there are any defaults under the lease and, where applicable, stating whether such lessor intends to invoke its right to cancel the lease by reason of the proposed assignment thereof. Such estoppel certificate may also be helpful to Grant in connection with the determination referred to in the last sentence of paragraph 5 above.
- order declaring that Grant will have no liability for use and occupation charges for the premises demised under each of the leases for the month of December, 1975 or thereafter. The premises are vacant and are of no value to Grant apart from the ability to assign the lease thereof to a person willing to accept such assignment and, in certain cases, apart from the storage therein of certain trade fixtures. If the assignment transaction is consummated, the assignee will assume all liabilities arising under the appropriate lease as of December 1, 1975 and the lessor thereunder will therefore receive its rental for December, 1975 and thereafter.
- 8. Grant is proceeding by an Order to Show Cause so as to bring this matter to hearing at the earliest possible time in

APPLICATION OF DEBTOR-IN-POSSESSION FOR ORDER TO SHOW CAUSE AUTHORIZING ASSIGNMENT OF LEASES OF STORE PREMISES order to facilitate the prompt consummation of the assignment transactions-9. Grant believes that in view of the expense and time entailed in notifying its creditors of the proposed assignment of the leases, it is in the best interests of the estate that such notice be dispensed with pursuant to Rule I1-24(a)(2) of the Chayter XI Rules. IQ. A statutory Creditor's Committee was elected at the first meeting of creditors held on November 19, 1975. Grant will mail to co-counsel for the Committee a copy of the pre-fixed Order. to Show Cause and of this application on or before the date specified in such order. II. No previous application for the relief sought herein has been made to this or any other Court. WHEREFORE, Grant respectfully prays that the pre-fixed Order to Show Cause be signed and that this Court make and enter an order granting the relief set forth in the said Order to Show Cause and such other and different relief as the Court may deem just. Dated: New York, New York December 7, 1975 W.T. GRANT COMPANY Debtor-in-Possession WACHTELL, LIPTON, ROSEN & KATZ Vice President Attorneys for Debtor-in-Possession A-Member of the Firm 299: Park Avenue New York, New York 10017 Tel. (212) 371-9200

(01)	Book Value of Trado			\$ 1,231.85
(6)	Trade Fixtures included	<u>\$</u>	2	40 •
(0)	Other	None	None	. eu
63	Amount	\$ 20,000	20,000	15,000
(9)	High	Companies, Inc.	Channell Companies, Inc.	City Products Corp., Ben Franklin Stores Div.
(5)	Term, Renewal	Term Expires 1/31/ 81; Renewal Op- tions-4 at 5 yrs. each; Rental-\$26,100 per, yr. gross against 34	Term Expires 7/31/ 81; Renewal Options-4 at 5 yrs. each; Rental-\$31,100 per yr. gross against 3%	Term Expires 4/30/ 82; Ronewal Op- tions-2 at 10 yrs. each; Rental-\$16,000 per yr. gross against 3%
€.	Date of Lease and of Amendments and Supplements thereto	5/12/60, Suppl. Agres. 5/12/60	7/15/60	\$/17/55, 6/15/56, 3/25/50
(3)	Mortgegee	The Franklin Life Insurance Com- pany	The Great-West Life Assurance Company of Canada	The Great-West . Life Assurance Company of Canada
(3)	Lessor	Cinnaminson Shopping Center, Inc.	Woodcrest Homes, Inc.	Malabar Shopping Center, Inc.
8	Store Number and Location	193 Cinnasinson, N.J.	331 Cherry 1111, N.J.	641 Nansfield, Ohio

	(10)	Book Value of Trade			
	6	Trade Value Pixtures of In Bid Fixtures	2	ş	1
	(8)	Other	None	Hancook	Fabrics, Inc.
	3	Amount	\$ 20,000	000	
	. (9)	High Bidder	Cloth World, Inc. to bo guar. by Brown Group, Inc.		Inc., to be guar. by Brown Group, Inc.
KXHIBIT A	(3)	Term, Ronewal	Term Expires 1/31/ 77; Renewal Options-4 at 5 yrs. each; Rental-\$25,000 per yr. gross against 3%		Term Expires 3/1/ 70; Ropewal Options-2 at 5 yrs. each; Rontal-\$20,007 per yr. gross
	3	Date of Leade and of Amendments and Supplements thereto	7/14/60		9/25/56,
	6	Mor tgagee	Mone		Commonwealth Life Insurance Company
	(3)	Lessor	Augusta Plaza, Inc.		Indian Trail Trading Post, Inc.
	8	Store Number	996 Indianapolis, Indiana		651 Louisville, Kentucky

(2) (3) (4) (5) (6) (7) (9) (9)	(10)	Book Value of Trade Fixturos	>-	\$ 5,154
(2)	6)		. ₹	
Date Of Loase and of Loase and of Loase and of Loase and for Loase and for Loase and for Loase and Commonwealth Life (23/58) Insurance Company Soseph and Edith Metropolitan Life 1/15/62 Term Expires 1/31/ Jeveloor, Inc. Birnholtr, Irving Insurance Company and Rose Guttan, Company Sirnholtr, Irving Company Insurance Company Sirnholtr, Irving Company Ar. gross and Rose Guttan, Company Loase Ar. Syrs. sach; Reseval Options-4 Term Expires 1/31/ City Products 79: 75: 75: 75: 75: 75: 75: 75: 75: 75: 75	(0)	Other Bidders	Cleth World, Inc., to be guar. by Brown Group, Inc.	None
Date of Loaso and of Amendments and Bupplements thorse of Loaso and Supplements and Supplements and Supplements thereto Options and Rontal Insurance Company Insurance Company Ar. gross and Rose Guttan, Company Insurance and Mriam Company Insurance Company Insurance Area Expires 1/31/ 191/ 191/ 191/ 191/ 191/ 191/ 191	3	Amount	9 35,000	20,000
Date of Lease and of Lease and of Lease and of Amendments and of Amendments and Supplements thereto of Insurance Company Insurance and Rose Guttmen, Company Insurance and Milam and Milam Company Insurance and Milam Company Insurance and Milam Company Insurance and Milam Company Insurance and Milam and Mil	9	High Bidder	Jewelcor, Inc.	City Products Corp., Ben Franklin Stores Div.
Lessor Mortgages Lessor Mortgages Billou Corporation Commonwealth Life Insurance Company Soseph and Edith Metropolitan Life Birnholtz, Irving and Rose Guttman, Insurance Insurance Company Icrman and Mirlam Longel, Carl and Ruth Freedman and	(2)	Term, Renewal	Torm Expires 7/31/79; Renewal Options-2 at 10 yrs. each; Rental-\$20,452 per yr. gross against 3%	Term Expires 1/31/78; Renewal Options-4 at 5 yrs. each; Rental-\$21,000 per yr. gross against 3%
Lessor Lessor Joseph and Edith Me Birnholtz, Irving and Rose Guttman, ligrman and Mirlam Longel, Carl and Ruth Freedman and	9	Date of Lease and of Amendments and Supplements	6/23/58	1/16/62
	. (C)	Mortgagee	Commonwealth Life Insurance Company	Metropolitan Life Insurance Company
lon .	23	Lessor	Billou Corporation	Joseph and Edith Birnholtz, Irving and Rose Guttman, Herman end Mirlam Lengel, Carl and Ruth Freedman and Arthur A. and
Store Number of Store Number of Store Number of Store of	8	Store Numbor and Location	B67 Louisville, Kentucky	366 Algonac, Michigan

	T11 T T				
	(10)	Bock Value of Trade	4	1,543	
			•		
	6)	Trade fixtures in Bid	».	K es	2
	(0)	Other	Mone	None	City Products Corp., Ben Franklin Stores Div.
	6	Amount	\$ 10,000	20,000	10,000
	(9)	nigh Bidder	City Products Corp., Ben Franklin Storus Div.	City Products Corp., Ben Pranklin Stores Div.	Owensboro P.N. Hirsch & Co., Inc., to be quar. by Interco Incorporated
EXHIBIT A	(5)	Term, Renewal	Term Expires 9/30/ 60; Renewal Options-3 at 10 yrs. each; Rental-\$17,500 per yr. gross against 2-1/28	Term Expires 7/31/ 79, Renewal Options-4 at 5 yrs. each; Rental-\$11,400 per yr. gross against 3%	Term Expires 1/31/ 79, Renewal Options-2 at 5 yrs. each; Rental-\$27,575 per
	(9)	Duto of Losse and of Amendments and Supplements thereto	1/25/55, 5/22/50, 12/10/59	11/23/60, 3/21/62	4/13/59
	(3)	Mortgages	The Equitable Life Assurance Society of the United Status	The Equitable Life Assurance Society of the United States	Commonwealth Life Insurance Company
	(2)	Lessor	Jerema Realty Corp.	East Towns Shop- ping Center, Inc.	Gabe's Center, Inc.
	60	Store Number and Location	310 Ht. Pleasant, Michigan	1042 Bockford, Illinois	859 Ovensboro, Kentucky

NI	ER.	ESIED PER	30N3	
	(01)	Book Value of Trado		
	69	Trade Fixtures Included	2	2
	(0)	Other	None	Mone
	(2)	Amount	\$ 10,000	10,000
	. (9)	nigh	Carbondale P.N. Hirsch & Co., to be guar. by Interco Incorporated	Ovensboro P.N. Hirsch & Co., to be guar. by Interco Incorporated
EXHIBIT A	(5)	Term, Renewal	Term Expires 2/28/77; Renewal Options-3 at 10 yrs. each; Rental-\$24,552 per yr. gross against 3%	Term Expires 1/31/71, Renewal Options-2 at 7-1/2 yrs. each; Rental-\$19,800 per yr. gross against 30
	9	Date of Lease and of Amendments and Supplements thoreto	7/10/59, 12/15/60, 4/28/64	8/6/59, 4/7/61
	6	Mortgageo	The Connecticut Mutual Life In- Burance Company	Union Federal Savings and Loan Association of Evansville
	(2)	Lessor	Eastgate Plaza, Ltd. The Connecticut Mutual Life II surance Compai	Eastgate Center, Inc.
	8	Store Number and Location	920 East Alton, Illinois	944 Henderson, Kentucky

(10)	Book Value of Trade		
(6)	frade Value Fixtures of Included Trade	2	2
(0)	Other	None	None
63	Amount	\$ 15,000	25,000
(9)	nigh	Gamble-Skogmo, Inc.	Keith O'Brien Stores, Inc., to be guar. by Interco Incorporated
(5)	Term, Renewal	Term Expires 7/31/ Gamble-Skogmo, 76, Inc. Renewal Options-2 at 10 yrs. each; Rental-\$22,522 per yr. gross against 3%	Torm Expires 1/31/77; Ronewal Options-2 at 10 yrs. cach; Rontal-\$30,672 per yr. gross against 33
3	Date of Lease and of Amenidments and Supplements thereto	10/28/60	1/5/61, 2/15/65
(3)	Mortgaston	Home	Clacksmas Development The Equitable Life Company of the United States
8	Lossor	Buttrey Food Stores Division, Jewel Companies, Inc.	Clackamas Development Company
8	Store Number	1014 Bozeman, Montana	Oregon City Oregon

(10)	Book Value of Trade		
6)	Trade Pixtures Included In Bid	9	2
(9)	Other Bidders	Mone	None
63	Amount	\$ 15,000	15,000
(9)	High Didder	Carither's Stores, \$ 15,000 Inc., to be guar. by Interco	Carither's Stores, 15,000 inc. to be guar. by interco
(3)	Torm, Renewal	Term Expires 9/30/ 84; Renewal Options-4 at S yrs. each; Rental-\$55,000 per yr. gross against 2-1/24	Term Expires 7/31/ 80; Renewal Options-4 at 5 yrs. each; Rental-\$41,220 per yr. gross
•	Dato of Lease and of Amenhments and Supplements thereto	3/9/55,	12/~9/54,
(6)	Mortgagea	Actna Life Insurance Company	The Connecticut Mutual Life Insurance Company
(2)	Lossion	Multi Benefit Realty Actna Life Insur- Fund III ance Company	Montgomery Village
8	Store Mamber and Location	453 Nodesto, California	474 Santa Rosa, California

TIN 1	LERE	SIED PERS	ONS		
	(10)	Book Value of Trade			
	6)	Trade Pixtures included in Bid	₽	2	2
	9	Other	None	None	None
	3	Amount	\$ 20,000	20,000	20,000
	(9)	High	Cloth World, Ind., to be quar. by Brown Group, Inc.	Cloth World, Inc., to be guar. by Brown Group, Inc.	Cloth World, Inc., to be guar. by Brown Group, Inc.
EXHIBIT A	(3)	Term, Renewal	form Expires 7/31/ Cloth World, Inc.,\$ 20,000 76; Renewal Options-3 Brown Group, at 5 yrs. each; Inc. Rental-\$26,625 per yr. gross against 3%	Term Expires 1/31/ Cloth World, Inc., 80, Renewal Options-3 Brown Group, at 5 yrs. each; Inc. Rental-\$22,493 per yr. gross	Term Expires 7/31/77; Ronewal Options-4 at 5 yrs. each; Rental-\$31,913 per yr. gross
	3	Date of Lease and of Amendments and Supplements thereto	3/10/57	2/10/59	5/12/61,
	6	Hortgagee	None	Hone ;	Connecticut General Life. Insurance Company
	83	Leesor	J.A. Turner, as Trustes for Publix Super Markots, Ind. Profit Sharing Plan	J.A. Turner, Trustee for Publix Super Narkets, Inc. Profit Sharing Plen and Trust	Park Boulevard Shop- ping Center, Inc.
	8	Store Number	616 Lakeland, Florida	897 gt. Peters- burg. Florida	*1124 Pinellas Park, Florida

(2) (3) (4) (5) (6) (7) (9)		8	Store Number	Il44 Franklin, Tunnessee	Garden Grove, California
(4) (5) (6) (7) (9)		8		Arnold Haber, Jr.	Lane Developers,
Term, Renewal High Amount Other Included Options and Rental Bidder Bidder In Bid In Bidder In Bid Renewal Options—3 Franklin at 5 yrs. each; Stores Div. Rental-\$21,045 per yr. gross against 2-1/24 Term Expires 1/31/ Pacific 15,000 None No None No Hone At 5 yrs. each; Renewal Options—4 Inc. None No Hone At 5 yrs. each; Renewal Options—4 Inc. None No Hone At 5 yrs. each; Inc.		(3)	Mortgagee		Inc. Union Bank
(6) (7) (8) (9) Trado Trado Fixtures Bidder Included Bidders In Bid In Bid Corp., Bon Franklin Stores Div.		(9)	Date of Loase and of Amendments and Supplements thereto	8/19/61, 1/18/63	6/15/60,
High Amount Other Included Bidder in Bid in Bid Corp., Ban Franklin Stores Div. Pacific 15,000 None Yes Noticular of the Bidder in Bid	KAHIBIT A	(9)	Term, Renewal	Term Expires 1/31/76; Renewal Options-3 at 5 yrs. each; Rental-\$21,045 per yr. gross against 2-1/2%	Term Expires 1/31/ 83; Renewal Options-4 at 5 yrs. each; Rental-\$36,092 per
Trado Trado Pixtures Other included Bidders in Bid None Yes		. (9)		City Products Corp., Ben Franklin Stores Div.	Pacific Liquidators, Inc.
Trado Fixtures Included In Bid No		3	Amount	\$ 10,000	15,000
그는 사람들은 사람들은 그렇게도 가장이 많아보고 있는 아이들은 이 이 이 사람들은 아니라를 살아보고 있다면 하는데 그는 사람들이 되었다. 그는 사람들은 사람들은 사람들은 사람들은 사람들은 사람들은 사람들은 사람들은		(9)	Other	None	Nome
Dook Value of Trad		(6)			<u>8</u>
9 9 9 9		(10)	Dook Value of Trade	\$ 213	

8	Store Number and Location	390 Van Muys, California	• 701 Bakers- fleid, California
(3)		New York Life Insur- New York Life ance Company Insurance Company	Mrs. Mamie Michols
6	Hortgages	New York Life Insurance Company	General Mortgage Company
(9)	Date of Lease. and of Amendments and Bupplements	10/17/52	95/\$2/5
89	Torm, Renowal	Torm Expires 10/21/ 82, Noncwal Options-6 at 5 yrs. each; Rental-\$34,115 per yr. NET	Term Expires 6/30/77; Renewal Options-2 at 10 yrs. each; Rental-\$12,000 per
(9)	litgh	Pic N Save Corp. \$ 12,000	Pacific Liquidators, Inc.
6	Amount	\$ 12,000	15,000
(8)	Other	. Poo	None
(6)	Book Trade Value Fixtures of included Trade	· <u>\$</u>	2
(10)	Book Value of Trade		

"INT		PERSONS"	
(10)	Book Value of Trade		
(6)	Trade Flxtures included in Bid	8	2
. (8)	Other	Cloth World, Inc., to be guar. by Brown Group, Inc.	None
3	Amount	40,000	000 09
9)	nigh Bidder	Andrew J. Duncan	Dart Drug Company
EXILIDIT A	Term, Renewal	Term Expires 7/31/ Andrew J. Duncan . \$ 40,000 Cloth World, 80; Rencwal Options-4 at 5 yrs. each; at 5 yrs. each; Rental-\$27,540 per yr. gross against 3%	Torm Expires 7/31/ Dark Drug Company 83, Renewal Options-1 at 10 yrs., 3 at 5 yrs. each; Rental-\$96,560 per yr. gross against 3%
•	Date of Lease and of Amendments and Supplements thereto	1/21/60, 5/13/63	4/2/62
6	Mortgagee	Aetna Life Insurance Company	Continental Assurance Company
(3)	Lossor	Five Points Shopping Aetna Life Insuranc Company	Georgia-Conn, Inc.
8	Store Number and Location	964 Santa Barbara, California	*1166 Silver Spring, Maryland

Lease contains provision affording leasor a right of cancellation exercisable following receipt of leases's notice of intent to assign.

EXHIBIT B TO APPLICATION - TERMS AND CONDITIONS OF SALE

EXHIBIT B

TERMS AND CONDITIONS OF SALE

- 1. A deposit of 10% of the purchase price shall be paid to Grant upon approval of the offer by the Court, such deposit to be made by check subject to collection.
- 2. The balance of the purchase price shall be paid by bank or certified check upon the execution and delivery of the Assignment and Assumption Agreement annexed as Exhibit C to the foregoing application and, where applicable, the Bill of Sale annexed as Exhibit D to the foregoing application.
- 3. The Assignment and Assumption Agreement and, where applicable, the Bill of Sale, shall be executed and delivered on the next business day following the approval of the offer by the Court.
- 4. All adjustments to be made between Grant and the assignee in connection with the Assignment and Assumption Agreement shall be as of December 1, 1975.
- 5. In the event that Grant is unable for any reason to consummate the transaction and to execute and deliver the Assignment and Assumption Agreement, and, where applicable, the Bill of Sale, its sole liability to the offeror shall be for the return of the deposit referred to in item 1 of this Exhibit B.

EXHIBIT C TO APPLICATION - ASSIGNMENT AND ASSUMPTION AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT

AGREEMENT made this day of December, 1975, but as of December 1, 1975, between W.T. GRANT COMPANY, as Debtor and Debtor-in-Possession ("Assignor") and , ("Assignee").

RECITALS:

- A. W.T. Grant Company, as lessee, was party to a lease and lease agreement dated (the "Lease") with , as lessor.
- B. W.T. Grant Company filed a petition under Chapter XI of the Bankruptcy Act and Rule 11-6 of the Chapter XI Rules on October 2, 1975 with the United States District Court for the Southern District of New York (the "Court") and was authorized to continue the operation of its properties as Debtor-in-Possession.
- C. Assignor desires to sell, assign and transfer the Lease to Assignee and Assignee desires to accept said sale, assignment and transfer upon the terms and conditions hereinafter set forth.
- D. The Court has authorized and empowered Assignor to execute and deliver this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth and for \$10 and other good and valuable considerations, the receipt of which is hereby acknowledged,

IT IS AGREED:

EXHIBIT C TO APPLICATION - ASSIGNMENT AND ASSUMPTION AGREEMENT

- 1. Assignor hereby sells, assigns and transfers to Assignee any and all of Assignor's right, title and interest in and to the Lease. The foregoing sale, assignment and transfer is made without any recourse whatsoever to Assignor and without any representations and warranties whatsoever.
- 2. Assignee hereby accepts the foregoing sale, assignment and transfer and assumes and agrees to pay and perform all liabilities and obligations under the Lease arising on and after December 1, 1975. Assignee shall indemnify and save Assignor harmless from and against any and all claims, demands, actions, causes of action, suits, proceedings, damages, liabilities and costs and expenses of every nature whatsoever (including, without limitation, reasonable attorney's fees) arising on or after December 1, 1975 and relating to the Lease or the premises demised thereunder.
- 3. All taxes and other governmental charges and fees, including, without limitation, any and all transfer taxes, stamp taxes, sales taxes and recording fees, relating to the transaction evidenced by this agreement shall be paid by Assignee.
- 4. This agreement shall be binding upon the successors and assigns of the parties hereto. Assignor and Assignee shall execute and deliver such further and additional instruments, agreements and other documents as may be necessary to evidence or carry out the provisions of this agreement.

W.T. GRANT COMPANY, Debtor and Debtor-in-Possession

ATTEST:	and Debtor-In-Possession
	Bv
ATTEST:	

EXHIBIT D TO APPLICATION - BILL OF SALE BILL OF SALE

	KNOW ALL MEN BY THESE PRESENTS, that W. T. GRANT COMPANY,
	ebtor-in-Possession ("Grant"), for and in consideration of the sum
1.	5 \$10.00 and other good and valuable considerations, the receipt
0	f which is hereby acknowledged, paid by
	as sold, assigned and transferred and by these presents does sell,
2	ssign and transfer unto, its successors
	nd assigns, any and all of Grant's right, title and interest in
	nd to the trade fixtures and equipment presently located in those
c	ertain store premises heretofore occupied by Grant in
li	
	TO HAVE AND TO HOLD the same unto
: 1	its successors and assigns forever.
**	PROVIDED, HOWEVER, THAT this sale, assignment and trans-
	fer is without representations of any kind by Grant (including,
. '	without limitation, any warranty of title, merchantibility or fit-
:	ness for a particular purpose) and is without recourse to Grant.
	AND PROVIDED FURTHER, THAT by its acceptance and execu-
1	tion of this Bill of Sale, is accepting
	said trade fixtures and equipment "as is" and is agreeing to pay
į	any and all sales, transfer and other governmental taxes, charges
	and fees relating to the sale, assignment and transfer evidenced
	hereby.
	IN WITNESS WHEREOF, Grant and
	have executed this instrument on the day of December, 1975.

EXHIBIT D TO APPLICATION - BILL OF SALE

W. T. GRANT COMPANY, Debtor-in-Possession

Ву .			 	
		•		
D				

NOTICE OF SETTLEMENT OF ORDER

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In re

In Proceedings for an Arrangement

W. T. GRANT COMPANY, :

No. 75 B 1735

Debtor. :

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that the within is a true copy of an Order which will be presented for settlement to the Honorable John J. Galgay, one of the Bankruptcy Judges of this Court, at Room 235 of the United States Courthouse, Foley Square, New York, New York, on the 24th day of December, 1975 at 10:30 in the forenoon or as soon thereafter as counsel may be heard.

Dated: New York, New York December , 1975

WACHTELL, LIPTON, ROSEN & KATZ

Bv

A Member of the Firm

Attorneys for Debtor and Debtor-in-Possession Office and P. O. Address

299 Park Avenue

New York, New York 10017 Tel. No.: (212) 371-9200

TO:

Woodcrest Homes, Inc. P.O. Box 778 Cherry Hill, New Jersey

The Great-West Life Assurance Company of Canada 60 Osborne Street Winnipeg, Manitoba Canada R3C 3A5

Attn: Secretary

NOTICE OF SETTLEMENT OF ORDER

Emanuel Halper, Esq.
Zissu, Lore, Halper and Robson
450 Park Avenue
New York, New York
Att: Walter Gumbinger, Esq.

Alan Miller, Esq. Weil, Gotshal and Manges 767 Fifth Avenue New York, New York 10022

E. Stevenson Fluharty, Esq. Epstein, Fluharty, Freeman Gerstein and Mintz 34 Tanner Street Haddonfield, New Jersey 08033

Zartleg Development Corporation c/o Zissu, Lore, Halper and Robson 450 Park Avenue New York, New York Att: Walter Gumbinger, Esq.

ORDER PRESENTED FOR SETTLEMENT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In re

In Proceedings for an Arrangement

W. T. GRANT COMPANY,

No. 75 B 1735

Debtor. :

ORDER

An application having been brought on by an order to show cause dated December 2, 1975 and returnable on December 11, 1975, wherein W. T. Grant Company, as Debtor and Debtor-in-Possession (collectively: "Grant") sought an order authorizing it to sell, assign and transfer to Channell Companies Inc., for the total purchase price of \$20,000, or to any other person making a higher and better offer therefor, all of Grant's right, title and interest in and to that certain lease and lease agreement dated July 15, 1960 (the "Lease"), between Woodcrest Homes, Inc. ("Lessor"), as lessor, and W.T. Grant Company, as lessee, and wherein Grant sought further and ancillary relief with respect to said sale, assignment and transfer, and due notice of hearing having been given by service of said order to show cause upon the Lessor, upon the mortgagee identified in column 3 in Exhibit A annexed to said application, upon Channell Companies, Inc. and upon cocounsel to the Creditors' Committee herein, and after hearing Grant by its attorneys, Messrs. Wachtell, Lipton, Rosen & Katz, by Theodore Gewertz and Laurence D. Cherkis, of counsel, and after hearing Channell Companies, Inc., by Jordan Newman, Zartleg Development Corp. by its attorneys, Messrs. Zissu, Lore, Halper & Robson, by Emanuel Halper, of counsel, and the Creditors' Committee herein by its attorneys, Messrs. Weil, Gotshal and Manges, by Alan

ORDER PRESENTED FOR SETTLEMENT

Miller, of counsel, and it appearing that the offer of \$26,500 of Zartleg Development Corp. is the highest and best offer, and upon the said application and the exhibits thereto and upon all the proceedings had before me, and after due deliberation, and sufficient cause appearing to me therefor, it is

ORDERED, that W. T. Grant Company, as Debtor and Debtor-in-Possession, be, and it hereby is authorized and empowered to sell, assign and transfer to Zartleg Development Corp., for the total purchase price of \$26,500, all of Grant's right, title and interest in and to the Lease, with such sale, transfer and assignment to be upon the terms and conditions set forth in Exhibit A hereto and to be evidenced by the Assignment and Assumption Agreement in the form annexed hereto as Exhibit B; and it is further

ORDERED, that upon the payment by Grant to Lessor of the sum of \$2,591.67 representing use and occupation charges in an amount equal to the fixed minimum rent reserved in the Lease for the month of November, and the payment by Grant to its maintenance contractor of the sum of \$240.08 representing equipment maintenance charges incurred by W.T. Grant Company and payable pursuant to the Lease for the period preceding the filing of the petition herein, and conditioned upon the consummation of the sale, assignment and transfer authorized in the preceeding paragraph of this Order, Grant, as Debtor-in-Possession, be, and it hereby is, authorized and empowered to assume the Lease immediately prior to the consummation of said sale, assignment and transfer; and it is further

ORDERED, that upon and after the consummation of said

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ORDER PRESENTED FOR SETTLEMENT

sale, assignment and transfer Grant shall have no liability for any breach or breaches of the Lease occurring on and after the date of consummation of said sale, assignment and transfer; and it is further

ORDERED, that upon the payment by Grant of the sums authorized to be paid pursuant to the second decretal paragraph of this Order, Lessor shall be deemed to have waived any and all rights to claim and shall be precluded and estopped from claiming that any default occurred or existed under the Lease prior to December 1, 1975; and it is further

ORDERED, that Grant shall have no liability arising from use and occupation of the premises demised under the Lease for the month of December, 1975 or thereafter.

Dated: New York, New York December , 1975

Bankruptcy Judge

EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE

TERMS AND CONDITIONS OF SALE

- 1. The deposit of 10% of the purchase price, which has been paid by Zartleg Development Corp. ("Offeror") to Grant shall be held in escrow by Messrs. Wachtell, Lipton, Rosen & Katz subject to the within terms and conditions of sale.
- 2. On the eleventh day next following the entry of the pre-fixed Order by the Court (the "Closing Date"):
 - (a) Messrs. Wachtell, Lipton, Rosen & Katz shall release the aforesaid deposit to Grant:
 - (b) the balance of the purchase price shall be paid by Offeror to Grant by certified or bank check;
 - (c) the Assignment and Assumption Agreement in the form annexed to the pre-fixed Order as Exhibit B shall be executed and delivered; and
- (d) Grant will evidence its assumption of the Lease in a writing executed by Grant immediately prior to the execution and delivery of the Assignment and Assumption Agreement.
- 3. All adjustments to be made between Grant and Offeror in connection with the Assignment and Assumption Agreement shall be as of December 1, 1975.
- 4. In the event that Grant is unable for any reason whatsoever (other than the willful default of Grant) to consummate the transaction and to execute and deliver the Assignment and Assumption Agreement on the Closing Date, Messrs. Wachtell, Lipton, Rosen & Katz shall, unless otherwise directed in a writing signed

EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE

by Grant and Offeror (a) return to Offeror the deposit referred to in paragraph 1 above less an amount equal to the fixed minimum rent in the sum of \$2,591.67 payable under the Lease for the month of December, 1975 pro-rated from December 1, 1975 to the date on which there occurs any event which renders Grant unable to consummate the transaction (the "Deducted Amount") and (b) remit the Deducted Amount to Grant, whereupon neither Grant nor Offeror shall have any further liability to the other.

- 5. Messrs. Wachtell, Lipton, Rosen & Katz shall have no liability as escrowee except for their own bad faith or willful misconduct and shall be entitled to rely upon any writing signed by both Grant and Offeror.
- 6. Notwithstanding the foregoing, in the event that an interested party files a notice of appeal from the pre-fixed Order prior to the Closing Date, Offeror shall:
 - (a) consummate the transaction in accordance withparagraphs 1 -5 above; or
 - (b) elect by written notice to Grant given prior to the Closing Date not to consummate the transaction until the earlier of (x) 10 days following the giving of notice of closing by Offeror or (y) the final disposition of such appeal on terms favorable to Grant and Offeror.

In the event that Offeror elects to proceed under clause (b) above, Offeror shall pay when due for the account of Grant all use and occupation charges payable in connection with the Lease or

EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE

the premises demised thereunder arising during the period commencing on December 1, 1975 and continuing until the consummation of the transaction as provided in clause (b) (the "Liability Period"); provided, however, that Offeror may at any time during the Liability Period elect to terminate its obligation to consummate the transaction and to make the payments for the account of Grant upon no less than 10 days' prior written notice to Grant, subject, in any event, to the provisions of paragraph 4 above. In the event that Offeror elects to consummate the transaction as provided in clause (a) or (b) above prior to the final disposition of an appeal on terms favorable to Grant and Offeror, Offeror shall indemnify Grant from and against any and all damages and expenses arising from or relating to the consummation of the transaction.

EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

AGREEMENT made this day of December, 1975, but as of December 1, 1975, between W.T. GRANT COMPANY, as Debtor and Debtor-in-Possession ("Assignor") and ZARTLEG DEVELOPMENT CORP. ("Assignee").

RECITALS:

- A. W.T. Grant Company, as Lessee, was a party to a lease and lease agreement dated July 15, 1960 (the "Lease"), with Woodcrest Homes, Inc., as lessor.
- B. W.T. Grant Company filed a petition under Chapter XI of the Bankruptcy Act and Rule 11-6 of the Chapter XI Rules on October 2, 1975 with the United States District Court for the Southern District of New York (the "Court") and was authorized to continue the operation of its properties as Debtor-in-Possession.
- C. Assignor desires to sell, assign and transfer the Lease to Assignee and Assignee desires to accept said sale, assignment and transfer upon the terms and conditions hereinafter set forth.
- D. The court has authorized and empowered Assignor to execute and deliver this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth and for \$10 and other

EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT

good and valuable considerations, the receipt of which is hereby acknowledged,

IT IS AGREED:

- l. Assignor hereby sells, assigns and transfers to Assignee any and all of Assignor's right, title and interest in and to the Lease. The foregoing sale, assignment and transfer is made without any recourse whatsoever to Assignor and without any representations and warranties whatsoever.
- 2. Assignee hereby accepts the foregoing sale, assignment and transfer and assumes and agrees to pay and preform all liabilities and obligations under the Lease arising on and after December 1, 1975 or otherwise attributable to the period commencing on December 1, 1975 and continuing thereafter. Assignee shall indemnify and save Assignor harmless from and against any and all claims, demands, actions, causes of action, suits, proceedings, damages, liabilities and costs and expenses of every nature whatsoever (including, without limitation, reasonable attorneys' fees) arising on or after December 1, 1975 and relating to the Lease or the premises demised thereunder.
- 3. All taxes and other governmental charges and fees, including, without limitation, any and all transfer taxes, stamp taxes, sales taxes and recording fees, relating to the transaction evidenced by this agreement shall be paid by Assignee.
- 4. This agreement shall be binding upon the successors and assigns of the parties hereto. Assignor and Assignee shall execute and deliver such further and additional instruments, agreements and other documents as may be necessary to evidence.

EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT

or	carry	out	the	provision	s of this agree	ment.
					W.T. GRANT COMP and Debtor-in	ANY, Debtor -Possession
ATS	rest:				Ву	
					ZARTLEG DEVELOP	MENT CORP.
ATTEST:			Ву			

[Acknowledgements].

ORDER TO SHOW CAUSE DATED DECEMBER 24. 1975 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In the Matter or

W. T. GRANT COMPANY,

In Proceedings for an Arrangement

Debtor.

No. 75 B 1735

____X

ORDER TO SHOW CAUSE

Upon the annexed affidavit of Donald R. Levin, sworn to December , 1975, and no adverse interest having been represented and sufficient cause appearing therefor, it is

ORDERED, that W. T. Grant Company, as debtor-in-possession, and all other interested parties show cause before the
undersigned Bankruptcy Judge in Room 234 of the United States
Court House, Foley Square, New York, New York on the day
of December, 1975, at o'clock in the from noon of that day,
or as soon thereafter as counsel can be heard, why an order
should not be entered herein:

- (i) denying confirmation and authorization of the proposed sale and assignment by W.T. Grant Company, as debtor-in-possession, of its lease to store number 193 located in Cinnaminson, New Jersey and its lease to store number 331 located in Cherry Hill, New Jersey to Zartleg Development Corp.; and
- (ii) re-opening competitive bidding for the aforesaid leases; and it is further

ORDERED, that service of a copy of this order and the papers upon which it is granted upon Wachtell, Lipton, Rosen & Katz, counsel for W.T. Grant Company, as debtor-in-possession, Justin, July & Polan, counsel for Zartleg Development Corp. and co-counsel for the statutory Creditors' Committee on or before December 24, 1975 shall be deemed sufficient service.

Dated: New York, New York December 2/, 1975

Bankruptcy Judge

AFFIDAVIT OF DONALD R. LEVIN, ESQ., FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO APPLICATION OF DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE AND IN SUPPORT OF APPLICATION TO OPEN SALE OF LEASES FOR FURTHER BIDS

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter of

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In Proceedings for an Arrangement

W. T. GRANT COMPANY,

No. 75 B 1735

Debtor.

----X

DONALD R. LEVIN, being duly sworn, deposes and says:

- 1. I am a member of the firm of Parker, Chapin and Flattau, attorneys for Channel Companies, Inc. ("Channel") and I make this affidavit (i) in opposition to any order submitted by or on behalf of W. T. Grant Company, as debtor-in-possession ("Grant") seeking confirmation of the sale and assignment by Grant of its lease to store number 193 located in Cinnaminson, New Jersey ("Cinnaminson lease") to Zartleg Development Corp. and its lease to store number 331 located in Cherry Hill, New Jersey ("Cherry Hill lease") to Zartleg Development Corp.; and (ii) in support of its application to open the sale of the leases for further bids.
- 2. On October 2, 1975, Grant filed with this Court a petition for an arrangement under Section 322 of Chapter XI Rules. At the time of this filing, Grant leased and operated approximately 1,070 stores located in 40 states. After the entry of orders authorizing Grant to (i) continue to operate its business and manage its properties as debtor-in-possession and (ii) conduct going-out-of-business sales in and to surrender possession of 579 stores, Grant embarked upon a program to assign the leases of the stores covered by these orders to parties willing to pay a cash consideration for the assignment and to assume the obligations under the leases. Channel, among others, was solicited by Grant to submit offers to purchase certain of

AFFIDAVIT OF DONALD R. LEVIN, ESQ., FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO APPLICATION OF DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE AND IN SUPPORT OF APPLICATION TO OPEN SALE OF LEASES FOR FURTHER BIDS

of the leases, and prior to December 2, 1975, Channel, by its counsel, in fact, submitted written bids to purchase the Cinnamonson and Cherry Hill leases.

- 3. By order to show cause dated December 2, 1975, this Court set a hearing for December 11, 1975 on the question of authorizing the sale of certain leases to the "High Bidder" identified in column 6 of Exhibit A annexed to the application for the order to show cause. This exhibit identified Channel as the "High Bidder" for the Cinnamonson and Cherry Hill leases (each bid identified as being in the amount of \$20,000) and indicated that there were no other bidders for these leases. Moreover, in the application, upon which the order to show cause was granted, Grant represented that (i) "the bid of the person identified in column 6 of Exhibit A constitutes the highest and best offer in each instance" and (ii) it "is willing to accept the offer of each person identified in column 6 of Exhibit A." Significantly, neither the order to show cause, the application in support thereof nor Exhibit A annexed to the application, indicated that oral bids would be accepted at the hearing on December 11, 1975, or that the Court had authority to entertain such oral bids.
- 4. As a result of the foregoing Channel did not send to the December 11, 1975 hearing a representative authorized to make further competitive bids on the subject leases. Although no prior notice had been given, an auction was conducted on December 11, 1975 and a previously unknown bidder appeared and submitted oral bids on the Cinnaminson and Cherry Hill leases in excess of Channel's prior bids. Channel is located in Whippany, New Jersey and its representative could not maintain the necessary communication with officers of the Company within the

AFFIDAVIT OF DONALD R. LEVIN, ESQ., FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO APPLICATION OF DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE AND IN SUPPORT OF APPLICATION TO OPEN SALE OF LEASES FOR FURTHER BIDS

framework of the time pressures created by the auction, to continue to bid competitively at the auction. As a result, while Channel's representative was attempting to communicate the last bid to a Channel officer, the bidding was closed and each of the subject leases was sold to a third party for \$26,500.

- Under these circumstances, it is clear that Channel has been effectively denied its right to bid competitively on the Cinnaminson and Cherry Hill leases and that Grant has been compelled to accept a grossly inadequate consideration for the sale and assignment of these leases. Thus, the Cinnaminson lease is for an approximately 22,000 square foot store at an annual rent of \$26,100 for a term ending January 31, 1981 with four options to renew, each for a period of five years. Similar. ly, the Cherry Hill lease is for an approximately 23,000 square foot store at an annual rent of \$31,000 for a term ending July 31, 1931, with four options to renew, each for a period of five years. These leases, at slightly in excess of \$1.00 per square foot, are substantially below the current market value for the properties involved, and Channel, in fact, is currently paying in excess of \$2.00 per square foot for leases of comparable properties. Consequently, these leases would have a sale value in excess of \$25,500 and if the bidding were permitted to continue, or is now re-opened, Channel would be prepared to bid, and pay substantially in excess of \$26,500 for each of the subject leases.
- 6. Based upon the foregoing, it is respectfully submitted that this Court deny confirmation of the sale and assignment of the Cinnaminson and Cherry Hill leases to Zartleg Development Corp.; and that an order be entered re-opening the bidding on these leases.

Sworn to before me this day of December, 1975.

PETER M. PANKEN
Notary Public, State of New York
No. 31 -8267910
——Qualified In New York County
Commission Expires March 30, 1976

Donald R. Levin

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In re:

In Proceedings for an Arrangement

W. T. GRANT COMPANY,

75 B 1735

Debtor.

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK: : SS COUNTY OF NEW YORK:

ROBERT C. GRANT, being duly sworn, deposes and says:

- 1. Your deponent is the President of Zartlag Development Corp. (hereinafter referred to as "Zartlag") and makes this affidavit in opposition to the motion by order to show cause of Channel Companies, Inc. (hereinafter referred to as "Channel") for an order denying confirmation and authorization of the proposed sale and assignment by W. T. Grant of its lease to Store No. 193 and its lease to Store No. 331 to Zartlag and reopening competitive bidding for the aforesaid leases.
- 2. I have read the affidavit of Donald R. Levin in support of the instant motion. After reading the affidavit I met with counsel to Zartlag and discussed, in detail, the contents thereof. The statements made therein by Mr. Levin are patently absurd.
- 3. First, the initial relief sought by Channel is an order of this Court denying confirmation and authorization of the sales of leases by W. T. Grant Company to Zartlag relative to stores numbered 193 and 331 and located in Cinnaminson, New

Jersey and Cherry hill, No. Jersey respectively. Counsel advises your deponent that a demand for such relief is presently moot in that confirmation and authorization of the sale and assignment have already been had. Counsel advises your deponent that sales of the leases described in the application in support of the order to show cause dated December 2, 1975 were private sales as opposed to public sales through the use of an auction-eer. Confirmation of the sales were accomplished upon the Court's closing the bidding and accepting the highest bid at the hearing held before this Court on December 11, 1975. By virtue thereof, Channel's attempt to seek an order denying confirmation of the sales is a futile gesture since confirmation has already been had.

- 4. With respect to Channel's demand that the competitive bidding for the aforesaid leases be reopened, your deponent must address himself to the actual facts surrounding the transaction in dispute and point out to the Court the inaccuracies contained in the affidavit of Donald R. Levin submitted in support of this motion.
- 5. The thrust of Mr. Levin's affidavit is that Channel had no knowledge of the fact that higher and better bids for the leases described would be solicited and accepted by the Bankruptcy Court at the hearing on December 11, 1975. Mr. Levin specifically states on page 2 of his affidavit that, "Significantly, neither the order to show cause, the application in support thereof nor Exhibit "A" annexed to the application, indicated that oral bids would be accepted at the hearing on

December 11, 1975, or that the Court had authority to entertain such oral bids."

- 6. The aforementioned statement by Mr. Levin, counsel to Channel, is fallacious and intentionally calculated to mislead this Court. Had Mr. Levin or any other interested party taken the trouble to read the order to show cause of December 2, 1975, he would have found that paragraph 1 in the first decretal paragraph specifically makes provision for other persons making higher and better offers for the leases offered for sale. Said decretal paragraph sets the place, date and time for the hearing at which the Court would determine why an order should not be entered . . .
 - "(1) authorizing W. T. Grant Company, as debtor and debtor-in-possession (collectively: "Grant") to sell, assign and transfer to the 'high bidder' identified in column 6 of said Exhibit A opposite the name of such Interested Person, for the total purchase price set forth in column 7 of said Exhibit A or to any other persors making a higher and better offer therefor, . ." (Emphasis Added)
- 7. Mr. Levin further alleges that as a result of Channel's not having notice, it "did not send to the December 11, 1975 hearing a representative authorized to make further competitive bids on the subject leases." Such a statement is contained in paragraph 4 of his affidavit on page 2 thereof. Again, such a statement is patently fallacious.
- 8. Your deponent and Ben Riggs, Vice-President of Zartlag appeared before this Court on December 11,1975, at the time designated for the hearing on the aforementioned order to show cause. Representatives of Channel were there and noted their appearance on the record. A Mr. Mewman of Channel's law firm appeared together with Bernard Tudor, a representative of

Channel. When Judge Galgay announced that he was going to consider the sale of the leases for the Cinnaminson and Cherry Hill, New Jersey leases and that Channel's bids were the highest at that time received in the debtor in the sum of \$20,000 each, your deponent, in response to Judge Galgay's request for higher and better bids thereafter bid the sum of \$20,500 for each. Mr. Newman applied to the Court for a ten minute adjournment at which time he allegedly telephoned the executive offices of Channel and obtained authorization to bid higher. Upon resumption of the hearing the bidding continued upward and in \$500.00 increments. Channel's final bid was \$26,000.00. Your deponent on behalf of Zartlag bid \$26,500.00 in each case. Channel had finished bidding. No further bidding was forthcoming from any other person in the courtroom with respect to the aforementioned leases. The Judge specifically inquired of those present whether any further and better bids were available. There was no response. Channel had apparently completed its bidding. The hearing was then closed by the Bankruptcy Court and the much discussed "confirmation" sale was then and there had by the Bankruptcy Court. Channel did ask the Court for an adjournment of the hearing. The Court, at that time, was completely satisfied that all bids had been presented and denied Channel's application therefor.

9. Channel, by Mr.Levin's affidavit would have this
Court believe that it had no knowledge of the hearing; that it
had no knowledge of the procedure to be followed at the hearing;
that it did not appear at the hearing; that it had no
authorization to bid at the hearing. All of these allegations
are blatantly untrue. The order to show cause was served upon

Channel. It specifically stated that higher and better offers would be solicited at the hearing on December 11, 1975. Both a lay and legal representative of Channel appeared at the hearing and did bid at the hearing for the said leases. A full and fair hearing was had. For Channel to object at this late date is totally inequitable and works to the severe detrement of Zartlag.

10. Realizing that its position is untenable, Channel has made a futile effort to object to the consideration being paid by Zartlag to Grant as a result of the competitive bidding. Channel would have this Court believe that the consideration that Grant shall receive from Zartlag for the leases is inadequate. This proposition is likewise, absurd. If, in fact, the \$26,500.00 per lease paid by Zartlag to Grant is "grossly inadequate consideration" as is alleged by Channel, then one must rhetorically ask why Channel did not bid higher at the time provided for such bidding. The answer to that rhetorical question is quite apparent. The consideration is fair. However, as the losing bidder Channel has nothing to lose and everything to gain by seeking to pay more. Had Channel a sincere intention to pay more it could have made that offer at the time of the hearing. After the fact, its allegations lose credibility. Value of a piece of property is best determined by open bidding among persons willing to purchase the property. Such open bidding was accomplished before this Court on December 11, 1975 and it was determined that the highest any available purchaser would pay was \$26,500.00 per lease, the

amount offered for each lease by Zartlag. No appraisal or unsupported allegations could speak more eloquently on the evaluation of the property in question.

this Court in order for it to understand the reason for the instant application. Channel competes with Zartlag and its parent, Vornado, Inc. in the areas in which the Cherry Hill and Cinnaminson, New Jersey stores are located. The obtaining of these locations by Zartlag for Vornado poses a business threat to Channel. After the bidding was completed and after Zartlag became the successful bidder, Channel realized that at any price the leases were worthwhile so as to keep Vornado out of the competitive area encompassing Cinnaminson and Cherry Hill, New Jersey. However, at the time provided for bidding, Channel attempted to purchase the leases as cheaply as possible. When the actual value of those leases had been reached, Channel discontinued bidding.

12. It is respectfully urged that nothing will more certainly tend to discourage and prevent bidding at a sale such as that held before this Court on December 11, 1975, then a judicial determination that the highest and successful bidder may be deprived of the advantage of his accepted bid by an offer of another person, subsequently made, to bid higher on resale, especially one made by a person afforded the opportunity to bid at the time originally set therefor.

13. It is also submitted that as a result of Zartlag's successful bid it has invested considerable time, effort and money in preparing for the opening of said stores under the

Vornado banner. Fixtures have been prepared therefor, personnel has been set aside to man the stores and merchandise commitments have been made. It is urged that should any delay occur as a result of Channel's application herein, then Zartlag and its parent will be constrained to miss the "Easter Season" in the stores in Cinnaminson and Cherry Hill, New Jersey, a monetary detriment which would far exceed the amount paid by Zartlag or offered by any other person herein. For this Court to act in any fashion other than to deny Channel's application would be for this Court to ignore the provisions of the Bankruptcy Act and the equities of the parties. The hardship which would be thrust upon Zartlag and its parent as a result of the granting of this motion would be a travesty of justice and would make a mockery of the orderly procedure set by the Bankruptcy Act, the Bankruptcy Rules and followed to the letter by this Court.

WHEREFORE, it is respectfully prayed that Channel's application be in all respects denied and for such other and further relief as to this Court may be just and proper.

Sworn to before me this

day of ,197

ROBERT C. GRANT

EXCERPTS FROM TRANSCRIPT OF DECEMBER 11, 1975 PROCEEDING BEFORE JUDGE GALGAY UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK (In Bankruptcy)

In the Matter

of

W. T. GRANT CO.,

No. 75 3 1735

Debtor

U. S. Courthouse Foley Square New York, N. Y.,

December 11, 1975 2:00 o'clock P.M.

OSC f/auth. to assign leases (25)

BEFORE:

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HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET
NEW YORK, N. Y. 10038

CORTLANDT 7 3877

RAYVID REPORTING SERVICE

butto.

150 NASSAU ST., NEW YORK, N. Y. 10038, CCRTLANGT 7-387

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Girs !

RAYVID REPORTING SERVICE 150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-3877

Of Counsel

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3	APPEA	RANCES: (Continued)	
4		GOLENBOCK & BARELL, ESQS.,	
5		Attorneys for Landlord 645 Fifth Ave.	•
6		New York, N. Y. BY: ROBERT S. GOODMAN, ESQ.,	
7			Counsel
8		MAX BLOCK, JR., ESQ.,	
9		Attorney for Landlord, 866 United Nations Pla	za,
10		New York, N. Y.	
11		OFFERBOURG, STEINDLER, HOUSTON &	ROSEN, ESQS.,
12		Attorneys for Landlord 230 Park Ave.	s,
13		New York, N. Y. BY: GLENN B. RICE, ESQ.,	
14		Of	Counsel
15		LEVIN & WEINTRAUS, ESQS.,	
16		Attorneys for Landlord 225 Broadway,	•
17		New York, N. Y. BY: DANIEL ZIMMERMAN, ESQ.,	
18		Of	Counsel
19		BALLON, STOLL & ITZLER, ESQS.,	
20		Attorneys for Landlord 1180 Sixth Ave.	•
21		New York, N. Y. BY: BURTON D. STRUMPF, ESQ.,	
22		Of	Counsel
23		GERALD BLUMBERG, ESQ.,	
24		Attorney for Landlord, 1 Rockefeller Plaza,	
25		New York, N. Y. BY: MORTIMER TODEL, ESQ.,	Counsel

Of Counsel

150 NASSAU ST., NEW YORK, N. Y. 10038. CORTLANDT 7-3877

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3	APPEA	R A N C E S: (Continued)
4		SCHUR, ROSENBERG, HANDLER & JAFFE, ESQS.,
5		Attorneys for Bidder, 400 Madison Ave.
6		New York, N. Y. BY: STEPHEN N. CEA, ESQ.,
7		Of Counsel
8		SULLIVAN & CROMWELL, ESQS.,
9		Attorneys for Gamble-Skogmo, Inc., 48 Wall Street,
10		New York, N. Y. BY: CHARLES W. SULLIVAN, ESQ.,
11		Of Counsel
12		THOMAS D. VAUGHN, ESQ.,
13		Attorney for Bidder, 8400 Maryland Ave.
14		St. Louis, Missouri,
15		BALLON, STOLL & ITZLER, ESQS.,
16		Attorneys for Creditors' Committee, 1180 Sixth Ave.
17		New York, N. Y. BY: BURTON D. STRUMPF, ESQ.,
18		Of Counsel
19		HYMAN ROFFE, ESQ., Attorney for Landlord,
20		19 West 44th Street,
21		New York, N. Y.
22		TAENZER & FRIEDMAN, P.C., ESQS.,
23		Attorneys for Landlord, Route 130 and Riverton Road,
24		Cinnaminson, N. J. BY: URI HUGO TAENZER, ESQ.,
25		Of Counsel

THE JUDGE: All right, these three matters are adjourned to December 19 at



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RAYTO REPORTING BERVICE

150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-3877

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3 should go for that purpose.

THE JUDGE: I am reluctant to

accede to that suggestion at the moment. I

would prefer to try to work it out between

now and the 19th. You may renew your motion
then.

MR. HARRIS: Yes, thank you.

MR. MILLER: In connection with the Duncarp matter, the first matter on the calendar, my notice of the last hearing indicates that the application was granted and it was subject only to a determination whether the fixtures could be reclaimed from Mr. Nassi's purchase.

MR. GEWERTZ: That is correct.

MR. MILLER: Rather than I think
this being a matter where there was any
dispute with the landlord or otherwise. I
just would like some additional clarification
before we pass on to the next 25.

MR. CHERKIS: The question with respect to the fixtures is still open.

The bid would be resubmitted I would assume

1 YVID REPORTING SERVICE 150 NASSAU ST., NEW YORK, N. Y. 10038. CONTLANDT 7-387

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minson Shopping Center, Inc. Is there any

I believe I was stating that there were pre-petition maintenance charges of \$460.34, as well as the use and occupation for November, which will be paid prior to

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1	A-66
2	[25]
3	the consummation of the proposed transaction.
4	THE JUDGE: All right, I understand
5	you have a bid from Channell's Company, Inc.
6	in the amount of \$20,000.
7	MR. GEWERTZ: Right.
8	THE JUDGE: Are there any other
9	interested parties?
16	MR. HALPER: Emanuel B. Halper.
11	I am appearing for Zartleg Corporation.
12	My client is here.
13	May I ask a question before we
14	start bidd ng. Did you mention that the
15	use and occupation would be paid for by
16	Grant?
17	MR. GEWERTZ: Yes, it will come
18	out of the purchase price.
19	MR. TUMOLO: \$2175 per month based
20	on the minimum fixed rent.
21	THE JUDGE: \$2175 per month. I
22	gather the one month is the exact amount.
23	What is your client interested in doing?
24	MR. GRANI: Robert C. Grant,
25	\$2100.

Callina -

thought that duilders' Emporium was the same company as Two Guys.

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MR. HALPER: Well, they are different companies. They have common stockholders.

THE JUDGE: If they are responsible bidders, I don't see any reason to go into the genealogy of every one. You have offered

RAYVID REPORTING SERVICE

1	A-68
2	[27]
3	\$21,000?
4	MR. GRANT: Yes.
5	MR. NEWMAN: Jordan Newman, I
6	represent Channell Lumber. I am checking
7	with my office now to see if we are authorized
8	to make a higher bid. May I ask you to hold .
9	this one for a few minutes until I can speak
10	to the office.
11,	THE JUDGE: I hope we are not going
12	to go through this with each one of the 25.
13	I would hope that whoever is here would have
14	authorization to move.
15	MR. HALPER We have authorization
16	to move a d we will have certified checks
17	before the Court adjourns to pay the entire
18	amount that we bid.
19	THE JUDGE: Inasmuch as Channell
20	has submitted a formal bid prior to the
21	formal hear ng, I will grant a ten minute
22	recess on this particular case. Then we
23	will pick it up again.
24	MR. HALPER: We consent to it.
~	

THE JUDGE: Off the record.

1	A-69 [28]
2	[20]
3	(Discussion off the record.)
4	THE JUDGE: Number 193, Cinnaminson
5	The last bid was by Mr. Grant. His
6	bid was \$21,000. Now I will hear from
7	Channell Companies.
8	MR. NEWMAN: What was the last
9	bid, your Honor?
10	THE JUDGE: \$21,000.
11	MR. NEWMAN: On 193, Channell
12	bids \$22,000.
13	MR. GRANT: \$22,500.
14	MR. NEWMAN: Channell bids \$23,000.
15	MR. GRANT: \$23,500.
16	MR. NEWMAN: Channell bids \$24,000.
17	MR. GRANT: \$24,500.
18	MR. NEWMAN: Channell bids \$25,000.
19	MR. GRANT: \$25,500.
20	MR. NEWMAN: Channell bids \$26,000.
21	MR. GRANT: \$26,500.
22	MR. NEWMAN: Your Honor, I have
23	no further authority on this, though I may
24	be able to obtain further authority.
25	THE JUDGE: No, I don't think we

satisfied?

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MR. TAENZER: We take no position. If the problems cannot be resolved we may be back.

RAYVID REPORTING SERVICE SC NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-3877

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3		MR. GEWERTZ: The next one is
4	1	Cherry Hill, New Jersey, the respondent is
5		Woodcrest Homes, Inc. The successful
6		bidder is again Channell Companies, Inc.,
7		again \$20,000.
8		THE JUDGE: Is Woodcrest Homes
9		represented in Court?
10		MISS SARSHIK: Frances Sarshik, I
11		am a corporate officer.
12		THE JUDGE: Is Great-West Life
13		Assurance Company of Canada here in Court?
14	•	(No response.)
15		THE JUDGE: Hearing no response,
16		I gather not.
17		Channell Company in this matter
, 18		has bid \$20,000?
19		MR. GEWERTZ: Yes.
20		MR. NEWMAN: Yes, that is correct.
21		THE JUDGE: Are there any other
22		bidders?
23		FIR. HALPER: I am here again for
24		Zartleg Corporation. The answers for us

are the same and we are also bidding

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	\$21.	,000
	7 ;	

4	MR. GEWERTZ: Pre-petition amounts
5	owing, \$240.08 and November use and
6	occupation, \$2,591.67.

		THI	E JI	UDGE:	: I	gather	your	request
is	the	same,	to	get	auth	nority?		

MR.	NEWMAN:	Yes,	i.t	is.
		,		

10				
10	THE JUDGE:	Me will	2200	thin
	ALLE GODGE.	ME MITT	pass	CHIES.

11	Let's	go	back	to	number	331.
		0				-, -,

12	Cherry Hill,	New Jersey.	The last bid
13	was \$21,000.		

14	THE JUDGE: The last bid was
15	Zartleg Corporation for \$21,000.

16	MR. GRANT:	That is correct.

17	MR.	NEWMAN:	Channell	bids	\$22,000

		 J.J.L.	

19	MR.	GRANT:	\$22,500.

20	MR.	NEWMAN:	Channel1	bids	\$23,000.
			OHIGHHIO L L	OTGS	723,000.

21	MR.	GRANT:	\$23,500.

22	MR.	NEWMAN:	Channelle	bids	\$24,000
	rik.	MEMBIAN:	Channelle	blas	\$24,00

00			
23	MR.	GRANI:	\$24,500.

24	100	\$1777 P. (A \$)			*** ***	
4	MK.	NEWMAN:	Channell	bids	S25.000.	H

25 MR. GRANT: \$25,500.

1	A-13
2	[32]
3	MR. NEWMAN: Channell bids \$26,000.
4	MR. GRANT: \$26,500.
5	MR. NEWMAN: I have no further
6	authority on this. I may beable to obtain
7	further authority.
8	MR. HALPER: I object to any
9	further adjournment.
10	THE JUDGE: I think the limit
11	of your authority is \$26,000. I must
12	move on with the matters. It appears that
13	Mr. Grant and the Zartleg Corporation
14	are the highest bidders at \$26,500.
15	Mr. Gewertz, do you have something
16	to say?
17	MR. GEWERIZ: We are willing to
18	accept \$26,500 and we will take care of the
19	necessary orders.
· 20	THE JUDGE: Is Woodcrest Homes in
21	Court?
22	MISS SARCHIK: We take no position
23	at this time.
24	THE JUDGE: Number 641.
25	MR. GEWERTZ: The next one is

TRANSCRIPT OF DECEMBER 30, 1975 PROCEEDING BEFORE JUDGE GALGAY

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK (In Bankruptcy)

In the Matter

of

W.T. GRANT COMPANY

No.

75 B 1735

Debtor

U.S. Courthouse Foley Square New York, New York

December 30, 1975

OSC (CHANNELS CO., INC.)

BEFORE:

HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE

CERTIFIED STENOTYPE REPORTERS

150 NASZAU STREET

NEW YORK, N. Y. 10038

CORTLANDT 7- 3878

Grant

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APPEARANCES

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PARKER, CHAPIN and FLATTAU, ESQS., Attorneys for Channels Co., Inc., 530 Fifth Avenue New York, New York

BY: MARK ABRAMOWITZ, Esq., of Counsel.

BALLON, STOLL & ITZLER, ESQS.,
Attorneys for Zartleg Development,
1180 Avenue of the Americas
New York, New York

BY: WILLIAM J. HENRY, Esq., of Counsel.

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THE JUDGE: I will hear the Channels Co, Inc. matter.

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I think I understand the issues.

This was a bidding on two pieces of property with respect to the lease in Jersey. The unsuccessful bidder brought on an order to show cause saying that they were not aware of the fact that it was on opening bid situation and had he known that he would have had his principal in court and Grant said that they have accepted the highest bidder and don't want the integrity of the bidding set up.

25

The successful bidder says that he

AFFIDAVIT OF MARK ABRAMOWITZ, ESQ., FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO MOTION did not send to the December 11, 1975 hearing a representative authorized to bid competitively thereon. Nevertheless Zartleg, a previously unknown bidder, appeared at the December 11, 1975 hearing and submitted oral bids in excess of Channel's prior written bids. Taken by surprise, Channel's representative telephoned Louis Slater, Chairman of Channel's Board of Directors, at Channel's executive offices, located in Whippany, New Jersey, in order to request instructions. At that time, Mr. Slater authorized bids on behalf of Channel up to \$25,000 for each lease.

- exceed \$25,000, a second telephone call was made to Mr. Slater, who authorized and instructed Channel's representative to bid whatever was necessary to obtain the two leases. However, when he returned to the courtroom to implement these instructions, the bidding had apparently been closed and each of the two leases had apparently been obtained by Zartleg for a high bid of \$26,500. Significantly, at the close of the proceedings on December 11, 1975, no order was submitted or signed confirming any sale of these leases to Zartleg. As noted by this Court:
 "I told counsel for Grant to submit an order and did not consider anything as being final" (Tr. p. 8)*
- 7. Realizing that each of the leases was worth substantially in excess of \$26,500, and seaking to avoid the necessity of further applications to this Court, Mr. Slater thereafter spoke to Solomon Rogoff, President of Vornado, Inc., which is the parent company of Zartleg, and asked if he would consider selling Channel one of the subject leases. Although Mr. Rogoff agreed to consider this request and raply within a day or two, he failed to do so and consequently, Mr. Slater instructed counsel to take whatever stops necessary to re-open the bidding.

^{*} References preceded by "Tr." are to pages of the transcript of proceedings before this Court on December 30, 1975.

- 8. Thus, before any order was signed confirming the apparent sale to Zartleg, Channel moved by order to show cause, to re-open the bidding on the subject leases. The order to show cause was signed by this Court on December 24, 1975 and made returnable on December 30, 1975. It is notable that Emanuel Halper of the firm of Zissu, Lore, Halper and Robson, then counsel to Zartleg appeared before this Court on December 24, 1975 and opposed the signing of the order to show cause. At that time, Mr. Halper reported to the Court the Slater-Rogoff conversation referred to above, and argued, as Zartleg's new counsel now argues (Zissu Aff., par. 8) that Channel has sought "to engage in collusion vis-a-vis the bidding in Court". Needless to say, this contention was then rejected by this Court.
- 9. A full and complete evidentiary hearing was held, on Channel's motion on December 30, 1975, with all interested parties represented by counsel. In this regard, Channel presented expert testimony which demonstrated, beyond cavil, that Zartleg's bids, each in the amount of \$26,500, were substantially below the fair market value for the subject leases (Tr. pp. 15-22). Based upon this evidentiary showing, this Court noted that "it now appears to the court that someone was going to get a bargain" (Tr. p. 37) and held that "in the interest of justice and in the estate of W.T. Grant that I open the bidding and I will do so now and invite both parties to do so now". (Tr. p. 35). It is significant that, at this hearing, Zartleg presented no evidence which might tend to establish that its bids of \$26,500 represented a fair or adequate consideration for the subject leases.

Rather, Zartleg merely made the argument - which was rejected by this Court - that "the real issue why these people are endeavoring to beat us out of these leases and offer additional amounts over and above the bid that was confirmed at the sale is the fact that they are competitors of ours in New Jersey and stores in that state and were willing to pay more to keep us out of these areas where the two stores are located" (Tr. p. 7).

ber 30, 1975 and adjourned at the request of Zartleg, until December 31, 1975. On December 31, 1975, the bidding was concluded and both leases were obtained by Channel, the Cherry Hill lease for a high bid of \$215,200 and the Cinnaminson lease for a high bid of \$65,200. Thereafter, orders were signed by this Court confirming the sale of both leases to Channel.

THE INSTANT APPLICATION

11. Now Zartleg moves to "reargue" these orders, and upon such reargument, Zartleg seeks to "modify" these orders by reinstating its prior bids in the amount of \$26,500. In support of this application, it is urged that there is "new evidence" which would tend to "disqualify" Channel from bidding. However, this "new evidence" consists solely of the Slater-Rogoff conversation referred to in Paragraph 7 above, and more particularly explained in the accompanying affidavit of Louis Slater. Thus, based solely upon this conversation, it is claimed that Channel has "unclean hands" and has sought to restrain trade in violation of the anti-trust laws, and therefore, "Channel's offers on December 31 reflected only the value to Channel of accomplishing indirectly through the Court an anti-

competitive scheme that it could not accomplish through Zart-leg"(Zissu Aff., par. 12). However, it is clear that none of this "evidence", or the claims based thereon is "new" or otherwise entitled to serious consideration by this Court.

- (supra, par. 8) the Slater-Rogoff conversation, upon which this application rests, was related to this Court, by counsel for Zartleg, on December 24, 1975, and the arguments based thereon were made to this Court in opposition to the signing of the order to show cause and at the hearing held on December 30, 1975 (see supra, par. 9). Consequently, the claim now made in moving affidavit (Zissu Aff., par. 6) that "these facts were not presented to the Court earlier in the record because prior counsel not fully aware of them" is patently untrue.*
- Channel has sought to restrain trade are wholly without merit. Thus, these claims are not only denied in the accompanying affidavit of Louis Slater, but are also completely rebutted by the objective facts. In this regard, it was established at the December 30, 1975 hearing (Tr., pp. 15-22) that there are at least four other comparable stores available for lease within a close proximity to the stores in question. Certainly, these sites are available to Zartleg, and there has been no claim made that Zartleg has, in any way, been restrained from obtaining these stores. Moreover, Zartleg's parent is "one of the nation's 25 largest retailers with overall sales in 1975 expected to exceed \$1 billion", and it defies logic to assert that Zartleg could effectively be restrained from competing

^{*} Significantly, no affidavit by "prior counsel", i.e., Emanuel Halper, has been submitted on this motion. Moreover, the claim of lack of awareness is in apparent conflict with the affidavit of Robert C. Grant, Zartleg's president, which was submitted in opposition to the order to show cause, wherein it is stated (par. 2) that Grant discussed, with counsel, "in detail" the matters at issue

with a much smaller Channel.*

of conviction, that "its offers of \$26,500 per lease on Decomber 11, 1975 were equal to the fair market value" (Zissu Aff., par. 12). Thus, this statement is a mere conclusion, and Zartleg has never - either on this motion or at the December 30, 1975 hearing - presented any evidence or facts as to fair market value. On the other hand, it was conclusively established at the December 30, 1975 hearing, by expert testimony, that these leases were worth substantially in excess of \$26,500 (Tr. pp. 15-22).** Moreover, Zartleg, in fact, bid \$215,000 on the Cherry Hill lease and \$65,000 on the Cinnaminson lease.

As previously stated by Robert C. Grant, Zartleg's president: "Value of a piece of property is best determined by open bidding among persons willing to purchase the property" (Grant Aff., par. 10).

15. Based upon the foregoing, it is obvious that

^{*} In the year ended January 31, 1975, Channel reported sales of \$49,483,229 or approximately 5% of those of Zartleg's parent.

^{**} Apart from expert testimony, the undisputed facts establish a value in excess of \$26,500. Thus, the Cinnaminson lease is for an approximately 22,000 square foot store at an annual rent of \$26,100 for a term ending January 31, 1981 with four options to renew, each for a period of five years. Similarly, the Cherry Hill lease is for an approximately 25,000 square foot store at an annual rent of \$31,000 for a term ending July 31, 1981, with four options to renew, each for a period of five years. While leases are at rents slightly in excess of \$1.00 per square foot, the going rate for comparable properties is in excess of \$2.00 per square foot (Tr. pp. 15-22). Considering the length of the subject leases, it is clear that they have a market value substantially in excess of \$26,500.

no "new evidence" has been presented on this motion. All such facts and arguments were previously made, and rejected by this Court. Since it has, in any event, been convincingly demonstrated that the arguments here made by Zartleg are wholly without merit, it is respectfully submitted that the instant motion should be denied in all respects.

Mark Abramowitz

Sworn to before me this andday of January, 1976.

Notary Public

HARVEY M. BONEFARTH NOTARY FUBLIC. STATE OF NEW YORK No. 31-53/8450 Qualified in New York County Term Expires March 30, 1976

AFFIDAVIT OF LOUIS SLATER, FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In the Matter of

In Proceedings For an Arrangement

W.T. GRANT COMPANY,

75 B 1735

Debtor.

AFFIDAVIT

STATE OF NEW JERSEY)

OUNTY OF MORRIS

OUNTY OF MORRIS

LOUIS SLATER, being duly sworn, deposes and says:

- Channel Companies, Inc. ("Channel") and I make this affidavit in opposition to the motion made by Zartleg Development Corp. ("Zartleg") to "reargue" two orders of this Court dated and entered December 31, 1975, which confirmed the sale and assignment by W.T. Grant Company ("Grant"), as debtor-in-possession, of its lease to Store number 193 located in Cinnaminson, New Jersey and its lease to Store 331 located in Cherry Hill, New Jersey to Channel. More specifically, this affidavit is submitted for the purpose of answering the charges made in the moving affidavit of Solomon Rogoff.
- 2. This application arises out of the bidding by Channel and Zartleg, for the leases referred to above, which (i) initially took place on December 11, 1975, (ii) was reopened by this Court on December 30, 1975 as a result of an application made by Channel and (iii) was concluded on December 31, 1975 with Channel being the successful bidder. In this connection

AFFIDAVIT OF LOUIS SLATER, FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO MOTION

tion, prior to December 2, 1975, Channel submitted written bids to purchase the Cinnaminson and Cherry Hill leases. By order to show cause dated December 2, 1975, this Court set a hearing for December 11, 1975 on the question of authorizing the sale of certain leases to the "High Bidder" identified in an exhibit annexed to the application for order to show cause. This exhibit identified Channel as the "High Bidder" for the Cinnaminson and Cherry Hill leases and indicated that there were no other bidders for these leases.

- 3. Unaware that there would be any further or new bids for these leases, Channel did not send to the December 11, 1975 hearing a representative authorized to bid competitively on the subject leases. In fact, I did not learn of the Zartleg bids until after Zartleg, a previously unknown bidder, had appeared at the December 11, 1975 hearing and submitted oral bids on the subject leases, in excess of Channel's prior written bids. After the bidding had commenced, I received a telephone call at my office located in Whippany, New Jersey, from our representative requesting instructions. At that time, I authorized bids on behalf of Channel up to \$25,000.
- 4. Shortly thereafter, I received a second call from our representative requesting further authority. This time, I authorized and instructed our representative to bid whatever was necessary to obtain the two leases. However, when he returned to the courtroom to implement my instructions, the bidding had apparently been closed and the leases had apparently been obtained by Zartleg for a high bid of \$26,500.
 - 5. Upon learning this, and knowing full well that

AFFIDAVIT OF LOUIS SLATER, FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO MOTION

the leases were worth substantially in ricess of \$26,500, I thereafter spoke to Solomon Rogoff, President of Vornado, Inc., which is the parent company of Zartleg, and asked if he would consider selling Channel one of the subject leases. The proposal was made so as to obviate the necessity of further applications to this Court. Mr. Rogoff replied that he would consider my request and get back to me within a day or two. However, not having heard from Mr. Rogoff again, I subsequently instructed my attorneys to take whatever steps necessary to re-open the bidding. It is significant that at no time did I state, imply or suggest that "we could have gotten together about purchasing the two leases in question as well as other situations in the future" or that "it was a good idea for us to discuss where we were going and in what areas".

ly contended that Channel has "unclean hands" or that it is attempting to restrain trade. In this regard, even before Mr.

Rogoff allegedly informed me that "Builders Emporium...was moving toward the acquisition of stores...throughout New Jersey",

I had already instructed Channel's representative to bid as high as necessary to obtain the subject leases. Moreover, it has been established in the proceedings that there are many other similar stores presently available for lease in close proximity to the stores in question. Certainly, Zartleg is free to lease or otherwise acquire these sites and engage in direct competition with Channel. In any event, it is disengenuous for Mr.

Rogoff to urge that Vornado, "one of the nation's 25 largest retailers with overall sales in 1975 expected to exceed \$1 billion",

A-183

AFFIDAVIT OF LOUIS SLATER, FOR CHANNEL COMPANIES, INC., IN OPPOSITION TO MOTION

could be effectively restrained from competing with a much smaller Channel.

7. Therefore, it is clear that, based upon the foregoing, the charges made by Mr. Rogoff are wholly without substance and the instant application to "reargue" has no merit whatsoever.

Louis Slater

Sworn to before me this loth day of January, 1976.

Notary Public

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TRANSCRIPT OF JANUARY 26, 1976 PROCEEDING BEFORE JUDGE GALGAY

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK (In Bankruptcy)

In the Matter

of

W. T. GRANT COMPANY,

Debtor

No. 75 B 1735

U. S. Courthouse Foley Square New York, N. Y.

January 26, 1976 10:30 o'clock A.M.

N/MIN, RE: REARGUMENT (Channel)

BEFORE:

HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET

NEW YORK, N. Y. 10038

CORTLANDT 7 . 3877

Of Counsel

New York, N. Y.

BY: PHILIP C. POTTER, JR., ESQ.,

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3 1 Grant 2 APPEARANCES: (Continued) 3 COWAN, LEIBOWITZ & LATMAN, P.C., ESQS., Attorneys for Zartleg Devel. Corp., 200 East 42nd Street, 5 New York, N. Y. BY: ROGER L. ZISSU, ESQ., 6 Of Counsel 7 WEIL, GOTSHAL & MANGES, ESQS., 8 Attorneys for City Products Corp., 767 Fifth Ave. New York, N. Y. BY: ALAN A. LASCHER, ESQ., 10 Of Counsel 11 ALSO PRESENT: 12 13 FRANCES SWINICK 14 15 16 MR. GEWERTZ: The only matter left is the motion to reopen the proceedings. 17 18 THE JUDGE: Do I have papers on 19 that? MR. ZISSU: Yes, you do, you have 20 21 notice of motion with supporting affidavits with 22 Zartleg Development Corporation, which is the 23 moving party. There is an answering set of 24 affidavits served on me on Friday from

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Channel. I was served this morning in Court

Grant

with a memorandum of law from the Creditors'
Committee, Weil, Gotshal and Manges. It
may be that there will be a need for a reply
on my part because I was given these papers
so late. But I'd like to see how the argument
progresses.

MR. ROCHELLE: This morning I served on other counsel and I'd like to hand up to the bench the creditors' memorandum of law in opposition to the motion for rehearing. The memorandum of law basically recites --

MR. ZISSU: That will speak for itself, we are going to have argument.

THE JUDGE: We will have argument but I don't have any papers.

MR. ABRAMOWITZ: The answering papers were filed I believe Friday with the Clerk. I have an extra copy of the answering affidavit, if you would like.

THE JUDGE: Let me have it now and make sure you get it back.

MR. ZISSU: May it please the Court,

Grant

of the firm of Cowan and Leibowitz and Latman.

We represent Zartleg Development Corporation.

I know that the Court is familiar with what went on on December 11. I think December 24,

December 30 and 31. I won't belabor what happened in the bidding and I will reargue the law as it was argued at the time.

What we are concerned with is what we consider new evidence. The new evidence is set forth in an affidavit of Mr. Solomon Rogoff, which is attached to our motion papers.

THE JUDGE: Do you have an extra copy?

MR. ZISSU: Yes, I do. It is the last affidavit. Mr. Rogoff is the president of Vornado, Inc. Vornado, I think is perhaps best known as the owner and operator of Two Guys Discount Department Stores. They also own and control Zartleg Development Corporation and Builders' Emporium Stores, which is the chain of stores that competes with Channel in New Jersey.

Grant

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In brief Mr. Rogoff reports that 3 on December 12, one day after the first 4 bidding, he received @ call from Mr. Louis 5 Slater, the chairman of the board of Channel's. Mr. Slater, according to Mr. Rogoff's affidavit, asked Mr. Rogoff or inquired of him -- stated 8 that he didn't know that Vornado and Builders' Emporium were interested in stores of this 10 size, of the two leases in question here, 11 the one in Cherry Hill and I think the other 12 one is Sinamonson. 13

Mr. Rogoff said, "Yes we are moving in that direction." Mr. Slater then said, according to Mr. Rogoff, "Why don't you tell me that, we can get together on these things. We ought to get together on these things and other things in the future."

If I mis-cite the affidavit, it will peak for itself.

He then went on to propose, "Why don't we split the two stores. I understand you won the bidding yesterday. Why don't we split these two stores."

stores.

THE JUDGE: The bidding you are talking about was the second round?

MR. ZISSU: No, the first round.

At that point it is December 12 and Zartleg had won at these leases at \$26,500. Mr. Rogoff then said, in effect, "Well, why should we be splitting anything, they are our stores," at least believing that the sale prior to confirmation had given him an interest in the

They went on and they talked about having lunch at some point. Mr. Rogoff was non-comittal. That was the end of it.

That is the new evidence. I think -this motion isn't brought on on any whim or
accident. I think the legal context in which
this comes up should be considered. Section
41-A-1 of the Bankruptcy Act in effect provides
that no person in proceedings before a Referee
shall disobey or rescind any lawful order,
process or writ.

Colliers in Section 41 in discussing that section, there are one or two cases

Grant

"Persons who unite in making a cash offer
to a bidder at a trustee's sale to refrain
from bidding or who attempt to purchase an
accepted bid for a secret consideration and
couple their attempt with a threat to be
present at the confirmation hearing and
raise the bid if their offer is not accepted,
will be held guilty in contempt for impeding,
resisting and interfering with the trustee
in making a sale of the bankrupt's property
pursuant to the Referee's order."

This is at page 1590 of the volume that contains Section 41. Continuing, "Any attempt to induce a bidder to withdraw his bid is an even more obvious contempt of the Referee's order."

One of the cases cited is Cameron
Shoe, which is at 12 Federal Section 103.

The case from the District Court in California,
1926 which is very similar to the instant
situation. Cameron Shoe makes the point that
the kind of conduct that I think is involved

Grant

here raises a very serious question as to whether there is not only a contempt of Court but an indictable offense.

I think the length to which Chamel has gone in its answering affidavits evinces a concern and a justifiable concern with its conduct in the proceedings. The argument basically from Channel at this point has been that it is not what was really said in the conversation.

I suggest that even what Channel
has put in its affidavit, Mr. Slater's
affidavit, as an explanation for that
conversation, comes dangerously close again
to contempt of Court and to an indictable
offense. There are differences in the Channel
version and Mr. Rogoff's version but I think
the Channel version itself raises serious
questions.

Now, we have also been met with the argument that this isn't new evidence, because Mr. Halper of the law firm of Zissu, Lore, Halper and Robson, mentioned the conversation

RAYVID REPORTING SERVICE:
150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-387

Grant

to the Court on December 24 off the record in chambers when the order to show cause with respect to the reopening of the second bidding was signed.

As I understand it, that conversation was not presented in that detail. There was mention by Mr. Halper perhaps of an implication of collusion but I think he was -- at this point he was really not focused on this issue and he didn't understand the way 't fit into the whole pattern. So don't think it was of record, and I think it is now of record.

In addition, we have cases where
the courts have said, Bankruptcy Courts,
that the concepts of laches doesn't apply
with respect to the propriety or collusive
bidding of the bidding and that until the
matter is brought out as a matter of record,
it is not going to be held against anybody
who acted expeditiously to bring this matter
to the Court's attention.

I am trying to sum up arguments coming from different directions. The argument

RAYVID REPORTING SERVICE 150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-387;

not new evidence since it was known to Mr.

Rogoff on December 12. I would first like
to say that it is evidence. This Court certainly
has the power to consider it in dispensing
and exercising its equity powers. Also the
cases cited by the Creditors' Committee, which
I was served with this morning, basically
talk about new trials and discovery of a
letter of a trial that had gone on for a
couple of days or weeks. I don't think they
apply here.

This motion is timely, it was made within the ten days after the entry of the orders with respect to which we seek reargument. Also the frame here, I think the order to show cause was signed on Christmas Eve. There was a hearing on Thursday or Wednesday and the motion was returnable to December 30, which was really the second day after that long weekend.

I think in the overall time frame,
I think it is new evidence. I think it has

Grant

been brought to the Court's attention very

promptly. I don't think in dealing with the

reopening of the bid questions that prior

counsel for whom my firm has been substituted,

were able to conduct a thorough investigation

into every aspect of this matter that went

on, that we have been able to conduct in the

first week of January.

Basically, if this is put into the context, I think what went on here is that Zartleg was the successful bidder at the first meeting. The next day they got a phone call from somebody, from Channel, the chairman of the board who maybe tried to buy in one or two of the leases, at what price, I don't know and what the purpose of that phone call was, in view of the fact that apparently Channel was considering reopening the bidding.

THE JUDGE: You are only speculating

now.

MR. ZISSU: I am only speculating.
Two days later on December 24, an order to

show cause was submitted to the Court seeking

Grant

to reopen the bidding.

Now, our position is that on the first bidding that the price which was the result of the first bidding, judicial sale, openly and publicly conducted without any question of impropriety by anybody, is the actual fair market value. We believe that the price that was yielded at the reopened bidding was not related to fair value but was the result of a scheme to forego or to foreclosure the entry or the continued entry of the Builders' Emporium Stores into the New Jersey market by Channel.

I know the Court doesn't, as a matter of its role in the bankruptcy proceedings, find or not find anti-trust violations. We are not suggesting that the Court dispose of an anti-trust complaint. But we are suggesting that the anti-trust aspect of it explains the motive for Channel in doing what it did.

It also relates to what really is the fair market value. These stores would not have had that amount in value had it not been for

Grant

what we consider an illegal scheme conducted through the back door with the probably intent of chilling bidding.

The question really now is not how new is the evidence, it is what the relevance of this evidence is.

THE JUDGE: Certainly the bidding wasn't chilled, it was enhanced.

MR. ZISSU: No, but it would have been chilled had the plan to have Vornado split the stores at \$26,500 be accomplished. The question is -- I think there may be a need for more evidence as to just what went on in that telephone conversation. We are not here academically on the theory that we are just trying to get the stores at \$26,500 and we are trying to get even with Channel somehow.

Our client in the twelve or fourteen days between December eleven and December 24, thirteen days I guess, spent \$52,000 on those stores. I have cases which say that under those circumstances there is at least the creation of an equitable lien that binds the

MR. ABRAMOWITZ: There is no such list, it is just a blatant statement in paragraph 12.

MR. ZISSU: There should be an

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exhibit attached to it.

4 MR. ABRAMOWITZ: There wasn't one 5 attached to the one sent to me.

MR. ZISSU: It is attached, it is Exhibit B, the last page, the very last page.

THE JUDGE: All right, go ahead.

MR. ZISSU: The case I would cite is the case called Mesirow against Duggan, 240 Federal Second 75-1, Eighth Circuit, 1957. The only thing I would say, it really isn't -- one of the things here is whether the Court itself has been made an instrument to an overall plan which I think, in view of the Criminal Law and the Law of Contempt, may be illegal.

THE JUDGE: Let me ask you about the fixtures fabricated. What evidence do you have of that?

MR. ZISSU: Well, I don't have any evidence with me but my client would have to submit evidence on that.

THE JUDGE: In twelve days you have \$41,000 worth of fixtures fabricated?

RAYVID REPORTING SERVICE
150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-3877

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MR. ZISSU: That is what my

client tells me. They wanted to open the

stores very quickly. They wanted to be open

for Easter. That was also in the prior papers,

note the dollar amounts.

8 MR. ABRAMOWITZ: I will be very 9 brief here. I won't go into all the arguments. 10 I think they are set forth in our affidavit. 11 I think the most that can be said for this 12 telephone conversation, it was after the 13 bidding was closed. The substance of the 14 conversation was, we are interested in those 15 stores, we didn't know there was going to be 16 bidding, would you sell us one of the stores. 17 They never answered us, they never got back to 18 us. However, we are here for today with a 19 motion to reargue. I think the Court's sole

I believe that Zartleg said it best in its affidavit that they submitted some time ago, the affidavit of Mr. Grant, I believe, where he said the value of a

function in this thing is to get the best deal

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it can for the bankrupt estate.

open bidding among persons willing to purchase the property. That is what happened; the property went. This fantasy of some sort of conspiracy here to defraud the Court or to breach the anti-trust laws is just that.

I mean, even on the testimony that we had at that hearing, there was some testimony to the effect that there were many other similar locations. The only difference between those locations and this location was this location is a better buy certainly at \$26,500. But there are plenty of locations in Jersey, right in this area, just going for the asking as a matter of fact.

Now, Mr. Zissu has said it was
a contempt of Court, there was an anti-trust
violation here. Let him bring a lawsuit.

It has nothing to do with Grant, with the
bankrupt getting the most money it can for its
creditors.

THE JUDGE: Have you closed this transaction?

Grant

MR. ABRAMOWITZ: Yes, the order of confirmation was signed. I must also say that Mr. Zissu's setting forth 50,000 some odd dollars of expenses, the law is clear and in cases in my prior memorandum that a sale isn't complete until a confirmation.

If he went out, if his client went out and spent the money when they didn't have anything yet, well, that's their fault.

Also, I think it is clear there is no new evidence here. This was all argued in front of your Honor when I brought forth the order to show cause. I was there, Mr. Cherkis was there and Mr. Halpern was there. He was the one who raised this conversation.

THE JUDGE: I will hear from Mr.

Gewatz and then I will hear from the Creditors'

Committee.

MR. GEWERTZ: Basically our position on this is that we oppose the motion to reopen. We believe that the sole issue in this proceeding is whether your Honor had the discretion to open up the bidding prior to the time an order

open up

was entered confirming the assignment. That is the issue presented here.

Now, what happened before that, what happened after that or any discussions between the two rival bidders to the debtor does not seem to be relevant. As far as the asserted collusion is concerned, I am at a loss to quite understand that. If anything, the bidding here was quite spirited, as witness the ultimate purchase price. Rather than, as your Honor noted, rather than have a chilling effect upon the bidding, it was the desire of both of these bidders against each other which resulted in the very high price which was obtained.

It would seem to me a little contradictory toclaim that -- let me put it like this. The bidding had been closed on the date of the alleged phone conversation.

So the phone conversation could have nothing to do with any bidding. The bidding was thereafter reopened by application of one of the bidders. So if anything the evidence

oppose this motion on very technical grounds.

The applicable rules here are Rules 59 and 60 of the Federal Rules of Civil Procedure, which are made applicable in contested matters which this is by virtue of Rule 923 and 9.4 of the Bankruptcy Rules. The cases we cite in our memorandum of law stand for the very obvious proposition that a rehearing cannot be held based upon evidence which was known either to a client or his attorney prior to the entry of the order from which is sought to be reopened.

This is precisely what has happened here. It is very evident from the affidavits that this telephone conversation was with the principal of Zartleg and based upon that and the fact that any money they spent was expended before the 31st of December, makes it quite evident that this is not new evidence. Under the authority we cite there is no basis for this motion.

MR. ZISSU: We are not saying that the bidding was chilled by Zartleg's rejection of that approach in the phone call. We are saying it would havebeen if that plan had

anti-trust action, we are not suggesting in this motion or seeking to allege an anti-trust violation, except for the purpose of showing that a party has had unclean hands, may have comitted contempt and may have committed a crime, that party shouldn't be permitted to have the benefit of those unclean hands.

I think -- the question is really what is fair and what would the Court as one of equity do about this. I think it should be of concern that this kind of thing can go on while bidding is still taking place or about to be reopened. I think, although the Creditors' Committee and the debtor may not be concerned about that, I think the Court should be.

I also again point to the fact that
we did have some damages. I think there
was reasonable reliance on the finality of
the first sale, even though the Court does
apparently have discretion to reopen before

THE JUDGE: I will review the papers but fracily, I am inclined to let the matter stand in the posture that it is. If you want to appeal, I will act promptly enough so you are not prejudiced.

MR. ZISSU: Thank you.

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(3)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAR 2 1976.

JOHN J CALGAY
Bankryticy Judge

In The Matter -Of-

W. T. GRANT COMPANY,

No. 75 B 1735

Debtor

ZARTLEG DEVELOPMENT CORPORATION,

Plaintiff :

riaintiii

Vs.

MEMORANDUM OPINION

W. T. GRANT COMPANY.

Defendant :

JOHN J. GALGAY - Bankruptcy Judge

W. T. Grant Company ("Grant") filed a petition for relief under Chapter XI of the Bankruptcy Act on October 2, 1975. As part of its program for rehabilitation, Grant sought to close some 579 stores. This involved, along with liquidation or inventory, the assignment of leases of the closed stores to parties willing to pay cash consideration and assume Grant's obligations under the leases. Two of the stores which

(2)

Grant sought to close in this manner were located in Cinnaminson and Cherry Hill, New Jersey. They were stores number 193 and 331, respectively.

Among the potential lease purchasers were Zartleg

Development Corp. ("Zartleg") and Channel Companies, Inc.

("Channel").

Hearings were held in this Court on December 11, 1975 at which bidding was conducted for the two leases. At the close of the hearing I orally awarded the leases to Zartleg for \$26,500 each. But during the next two weeks this Court received an Order to Show Cause from Channel, alleging that the leases in issue were worth far more than what the Court had originally agreed to. Since I had not yet signed any order authorizing the assignment of the lease to Zartleg, I felt an evidentiary hearing was in order, and such hearing was held on December 30, 1975, with all interested parties present. At that time I was satisfied that Zartleg's bids of \$26,500 for each property were substantially below market value for the property. Based upon my conclusion.

(3)

I decided to reopen bidding for the property. Such bidding was held on December 30, 1975 and continued on December 31, 1975. When the bidding was over Channel was the high bidder on both leases. The Cherry Hill lease was bid in at \$215,000 and the Cinnaminson lease for \$65,200, thus confirming my earlier conclusion that the earlier Zartleg bids were too low. Thereafter, I signed orders which confirmed the assignment of both leases to Channel.

Zartleg now seeks to challenge these orders, asking the Court to allow a reargument on the issue of the leases. I do not believe such reargument is warranted and therefore I decline to grant Zartleg's motion.

First of all, Zartleg seeks to show that it and not Channel should be given the leases, at its original bid of \$26,500 for each lease. Channel is currently set to pay Grant \$280,400 for the leases which only two weeks earlier would have realized Grant only \$52,000. I find that to deprive Grant's estate of over \$225,000 would be grossly unfair to Grant and its creditors,

(4)

particularly since no order was ever signed which officially authorized the assignment of leases to Zartleg.

Secondly, Zartleg asserts that it has "new evidence" which would show, if proven, a possible anti-trust violation on the part of Channel. This allegation is directly controverted by an opposing affidavit and in any event the Bankruptcy Court would be an unusual forum for trial of anti-trust violations. If Zartleg feels that such a strong case for an anti-trust violation exists, it should pursue whatever remedies are available to it outside the Bankruptcy Court including contact with the Department of Justice Anti-Trust Division.

Even on purely evidentiary grounds, however, a rehearing is not warranted. The "new information" that Zartleg's counsel alleges was not "new" to Zartleg, merely to Zartleg's counsel. Case law is to the effect that such information is not "new" since the counselor has the responsibility of drawing the proper information from his client in preparation of his case. See <u>United</u>

States v. Bransen, 142 F. 2d (9th Cir. 1974), <u>Roach v. Stastney</u>,

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104 F. 2d 559 (7th Cir. 1939).

Accordingly, Zartleg's motion for reargument is denied.

SO ORDERED.

Bankruptcy Judge

Dated: New York, New York March Jof, 1976

NOTICE OF APPEAL TO DISTRICT COURT DATED JANUARY 7, 1976

UNITED	STATES	DIST	CRIC	I CO	URT
SOUTHER	N DIST	CRICT	OF I	NEW	YORK

W. T. GRANT COMPANY.

In re:

In Proceedings For An Arrangement
No. 75 B 1735

Debtor.

NOTICE OF APPEAL TO DISTRICT COURT

ZARTLEG DEVELOPMENT CORP., the appellant, appeals to the district court from the order of the Bankruptcy Judge entered in this case on December 31, 1975, Exhibit "A", authorizing W. T. Grant Company as Debtor and Debtor-In-Possession to sell, assign, and transfer to Channel Companies, Inc. all of W. T. Grant Company's right, title and interest in and to a lease betwen Cinnaminson Shopping Center, Inc. as lessor and W. T. Grant Company as lessee and from all other provisions of the aforesaid order.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

W. T. Grant Company

Messrs. Wachtell, Lipton, Rosen & Katz 299 Park Avenue

New York, New York 10010

The Creditors'
Committee

Messrs. Weil, Gotshal & Manges 767 Fifth Avenue New York, New York 10017

Cinnaminson Shopping Center, Inc.

Messrs. Tacnzer & Friedman Rt. 130 & Riverton Rd. Cinnaminson, New Jersey 08077

Zartleg Development Corp.

Messrs. Zissu, Lore, Halper & Robson 450 Park Avenue New York, New York 10022

Messrs. Ballon, Stoll & Itzler 1180 Avenue of the Americas New York, New York 10036

NOTICE OF APPEAL TO DISTRICT COURT DATED JANUARY 7, 1976

Channel Companies, Inc.

Messrs. Parker, Chapin & Flattau
530 Fifth Avenue
New York, New York 10036

Dated: New York, New York

January > 1976

Messrs. Zissu, Lore, Halper & Robson

By: Attorneys for Appellant

450 Park Avenue

New York, New York 10022

EXHIBIT A TO NOTICE OF APPEAL

ORDER DATED DECEMBER 31, 1976 GRANTING APPLICATION OF DEBTOR AND DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE BETWEEN CINNAMINSON SHOPPING CENTER, INC. AND GRANT

(Reproduced herein at pages A-139 - A-142.)

EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE

(Reproduced herein at pages A-143 - A-144.)

EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT

(Reproduced herein at pages A-145 - A-147.)

NOTICE OF APPEAL TO DISTRICT COURT DATED JANUARY 7, 1976

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In re:

W. T. GRANT COMPANY.

In Proceedings For An Arrangement No. 75 B 1735

Debtor.

NOTICE OF APPEAL TO DISTRICT COURT

ZARTLEG DEVELOPMENT CORP., the appellant, appeals to the district court from the order of the Bankruptcy Judge entered in this case on December 31, 1975, Exhibit "A", authorizing W. T. Grant Company as Debtor and Debtor-In-Possession to sell, assign, and transfer to Channel Companies, Inc. all of W. T. Grant Company's right, title and interest in and to a lease between Woodcrest Homes, Inc. as lessor and W. T. Grant Company as lessee and from all other provisions of the aforesaid order.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

W. T. Grant Company

Messrs. Wachtell, Lipton, Rosen & Katz 299 Park Avenue

New York, New York 10010

The Creditors' Committee

Messrs. Weil, Gotshal & Manges 767 Fifth Avenue New York, New York 10017

Woodcrest Homes, Inc.

Messrs. Taknzer & Friedman Rt. 130 & Riverton Rd. Cinnamirson, New Jersey 08077

Zartleg Development Corp.

Messrs. Zissu, Lore, Halper & Robson 450 Park Avenue New York, New York 10022

Messrs. Ballon, Stoll & Itzler 1180 Avenue of the Americas New York, New York 10036

NOTICE OF APPEAL TO DISTRICT COURT DATED JANUARY 7, 1976

Channel Companies, Inc.

Messrs. Parker, Chapin & Flattau
530 Fifth Avenue
New York, New York 10036

Dated: New York, New York

January 7 1976

0

Messrs. Zissu, Lore, Halper & Robson

Attorneys for Appel ant

450 Park Avenue

New York, New York 10022

EXHIBIT A TO NOTICE OF APPEAL

ORDER DATED DECEMBER 31, 1975 GRANTING APPLICATION OF DEBTOR AND DEBTOR-IN-POSSESSION TO CONFIRM SALE AND ASSIGNMENT OF LEASE BETWEEN WOODCREST HOMES, INC. AND GRANT

(Reproduced herein at pages A-148 - A-151.)

EXHIBIT A TO ORDER - TERMS AND CONDITIONS OF SALE

(Reproduced herein at pages A-152 - A-153.)

EXHIBIT B TO ORDER - ASSIGNMENT AND ASSUMPTION AGREEMENT

(Reproduced herein at pages A-154 - A-156.)

EX PARTE ORDER DATED MARCH 16, 1976 EXTENDING TIME TO FILE BRIEFS AND ADJOURNING APPEAL UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In the Matter of

75 B 1735

W. T. GRANT COMPANY,

ORDER

Debtor.

Now, upon reading the annexed affidavit of Roger L. Zissu, a member of the firm of Cowan, Liebowitz & Latman, P.C., attorneys for appellant Zartleg Development Corp., sworn to the 16th day of March, 1976, and good cause being shown, it is

ORDERED that the time of appellant Zartleg Development Corp. to serve and file its brief herein be extended to and including fifteen days from the date of this Order, and it is further

ORDERED that the time of the appellees to serve and file their briefs shall also be extended for fifteen days after service of the brief of appellant Zartleg Development Corp., and it is further

ORDERED that this appeal which now appears on the miscellaneous motion calendar on the 13th day of April, 1976

at 10:30 A.M. in Room 506 shall be and the same hereby is

adjourned to April 28, 1976 at the same time and place. AND

THAT THE CLERK OF THE COURT COURT OF THE COURT COURT OF THE COURT OF THE

J-homa's P. Grifst-U.S.D.J.

Dated: New York, New York March /6, 1976

original Signol. Thamas P. Gridsa AFFIDAVIT OF ROGER L. ZISSU, ESQ., FOR ZARTLEG DEVELOPMENT CORP., IN SUPPORT OF EX PARTE ORDER

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In the Matter of

75 B 1735

W. T. GRANT COMPANY.

Debtor. :

AFFIDAVIT

STATE OF NEW YORK COUNTY OF NEW YORK

ROGER L. ZISSU, being duly sworn says:

- 1. I am a member of the firm of Cowan, Liebowitz & Latman, P.C., attorneys for appellant Zartleg Development Corp., and make this affidavit in support of its application for an extension of the time in which to serve and file its brief in support of an appeal from two Orders of Bankruptcy Judge Galgay entered on December 31, 1975.
- 2. The reason for the application is that the clerk of the District Court in giving notice to the parties of the entry of this appeal from the December 31, 1975 Orders omitted to give such notice to my firm. Apparently, the clerk gave such notice to the firm for which my firm was substituted as attorneys to prosecute this appeal, although an Order approving such substitution was signed by Judge Galgay on January 21, 1976. Consequently, although this appeal was docketed in the District Court on March 3, 1976, we did not learn this until Friday afternoon, March 12, 1976.

- 4. We are obviously unable to complete the preparation of our brief and appeal within the next two days and respectfully request the granting of this extension.
- 5. The proposed Order granting this extension includes a provision extending the time of all other parties to file their briefs so that there will be no prejudice to anyone involved. We have similarly requested an adjournment of the return date of this matter before the District Court to conform with the request for scheduled filing of briefs.
- 6. There has been no prior application for this or similar relief.
- 7. The reason this application is being made ex parte is that it would take more than a few days to circulate an appropriate stipulation to the various parties involved and we do not wish to be in the process of requesting such an extension after the deadline in question.

Roger L. Zissu

Sworn to before me this 16th day of March, 1976.

Notary Pulming Cong of New York

Cualified in Direx County Certifiers filed in May York Co. Commission Comises Mayon 30, 1977 EXHIBIT A TO ZISSU AFFIDAVIT - ORDER AND STIPULATION OF SUBSTITUTION OF ATTORNEYS UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

X.P/

In the Matter of

In Proceedings for an Arrangement

W. T. GRANT COMPANY,

75 B 1735

Debtor.

STIPULATION OF SUBSTITUTION OF ATTORNEYS

IT IS HEREBY STIPULATED AND AGREED, that Messrs.

Cowan, Liebowitz & Latman, P.C., 200 East 42nd Street, New

York, New York 10017, be and hereby are substituted as

attorneys for Zartleg Development Corp. in the above matter
in the place and stead of Mrssrs. Zissu Lore Halper & Robson.

Dated: New York, New York

January 19 , 1976

ZISSU LORE HALPER & ROBSON

by Me CAL

A Member Thereof

450 Park Avenue

New York, New York 10022

COWAN, LIEBOWITZ & LATMAN, P.C.

Rv

A Member Thereof 200 East 42nd Street

New York, New York 10017

ZARTLEG DEVELOPMENT CORP.

By/- 181:611

174 Passaic Street Garfield, New Jersey

5)0 ORDERED Jan 21, 1976

EXHIBIT B TO ZISSU AFFIDAVIT - NOTICE FROM DISTRICT COURT

Date Form 3, 1976

RE: 75 B 1735 (W.T. Grent Company)

PLEASE TAKE NOTICE that the record on appeal in this matter has been transmitted to the Clerk of the District Court and that it will be placed on the Miscellaneous Motion Calendar in the United States District Court for the Southern District of New York for hearing on April 13, 1976 st10:30 A.M. in ROOM 506 ,United States Court Mouse, Foley Square, New York, New York.

Wachtell, Lipton, Rosen & Katz, Esqs. 6 299 Park Avenue 100 York, New York 10010

Weil, Gotshal & Manges, Esqs., 767 Fifth Avenue New York, New York 10017

100 1000

Taenzer & Friedman, Esqs. Pt. 130 & Riverton Pd. Cinnaminson, New Jersey 08077

Zissu, Lora, Halper & Pobson, Esqs. 450 Park Avenue New York, New York 10022

Ballon, Stoll & Itzler, Esqs. 1130 Avenue of the Americas New York, Few York 10036

Parker, Chapin & Plastau, Esqs. 530 Fifth Avenue New York, Lew York 10036

Judge Galgay U.S. Courthouse 40 Center Street Foom 202

This appeal is by Martleg Development Corp. from the order of the Bankruptcy Judge of 12/31/75 involving Woodcrest Mones, Inc. XXXX, Mirroning Companies, Inc., W.T. Grant. Chargel Companies, Inc.,

NOTICE OF APPEAL TO DISTRICT COURT DATED MARCH 4, 1976

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

----X

In re:

W. T. GRANT COMPANY.

Debtor.

In Proceedings For An Arrangement No. 75 B 1735

NOTICE OF APPEAL TO DISTRICT COURT

ZARTLEG DEVELOPMENT CORP. ("Zartleg"), the appellant, hereby appeals to the district court from the order in this case of the Bankruptcy Judge dated March 1, 1976 and entered March 2, 1976 denying Zartleg's motion to reargue two prior orders which had authorized W. T. Grant Company as Debtor and Debtor-in-Possession to sell, assign, and transfer to Channel Companies, Inc. all of W. T. Grant Company's right, title and interest in and to two leases between Woodcrest Homes, Inc. as lessor and Cinnaminson Shopping Center, Inc. as lessor and W. T. Grant Company as lessee, and from all other provisions of the aforesaid order.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

W. T. Grant Company

Messrs. Wachtell, Lipton, Rosen & Katz 299 Park Avenue New York, New York 10010

The Creditor's Committee

Messrs. Weil, Gotshal & Manges 767 Fifth Avenue New York, New York 10017

Messrs. Ballon, Stoll & Itzler 1180 Avenue of the Americas New York, New York 10036 NOTICE OF APPEAL TO DISTRICT COURT DATED MARCH 4, 1976

> Cinnaminson Shopping Center Messrs. Taenzer & Friedman

Rt. 130 & Riverton Rd.

Cinnaminson, New Jersey 08077

Zartleg Development Corp.

Cowan, Liebowitz & Latman, P.C. 200 East 42nd Street

New York, New York 10017

Channel Companies, Inc.

Messrs. Parker, Chapin & Flattau 530 Fifth Avenue

New York, New York 10036

Dated: New York, New York March 4, 1976

COWAN, LIEBOWITZ & LATMAN, P.C.

A Member Thereof Attorneys for Appellant

200 East 42nd Street New York, New York 10017 (212) 986-6272

In the Matter of W. T. GRANT COMPANY, Debtor

75 B 1735

These are three appeals by Eartleg Development Corp. (Eartleg) from three orders of Bankruptoy Judge Galgay in proceedings begun by W. T. Grant Company (Grant) on October 2, 1975 under Chapter XI of the Bankruptoy Act. After the orders appealed from and on April 13, 1976, Crant was adjudicated a bankrupt; a Trustee later qualified.

The three orders on appeal are:

- (1) one dated and filed December 31, 1975, which authorized Grant as debtor in possession to sell to The Channel Companies, Inc. (Channel) a lease of premises (Store No. 331) in Cherry Hill, N. J. for \$215,200 (see 11 U.S.C. § 713(2));
- (2) another dated and filed December 31, 1975, which authorized Grant to sell to Channel a lease of premises (Store No. 193) in Cinnaminson, N.J. for \$65,200; and
- (3) a third dated March 1, 1976, which denied a motion by Eartleg to reargue.

The applicable statute (11 U.S.C. § 713(2)) provides that "the Court may . . . (2) upon such notice as the Court may prescribe and upon cause shown, authorize . . . the debtor in possession, to . . . sell any property of the debtor . . . upon such terms and conditions as the Court may approve . . . ".

On December 2, 1975, Grant obtained an order that various "interested parties" show cause on December 11 "why an order should not be entered herein . . . authorising" Grant to sell to the "High Bidder" or "to any other person making a higher and better offer" all Grant's interest in various leases listed and described, including the leases for Stores 193 and 331. In the order to show cause Channel was shown as "High Bidder" for No. 193 and No. 331 at \$20,000 each.

On December 11, at a hearing, the Bankruptcy Judge (BJ) asked if there were "other interested parties" for the No. 193 lease. Eartleg offered \$21,000. Channel made higher bids but Eftleg bid \$26,500. The BJ said: "we ought to conclude this at \$26,500 bid" (SM 29). The debtor said it "was satisfied to accept the \$26,500 bid" (SM 29). As to the No. 331 lease, the BJ asked if there were "any other bidders" (SM 30). Extleg again bid against Channel and was

MEMORANDUM DECISION AND ORDER OF JUDGE WYATT DATED MAY 17, 1976

high bidder at \$26,500, recognized as such by the BJ (SN 32). Counsel for the debtor stated: "we are willing to accept \$26,500 and we will take care of the necessary orders" (SN 32).

Grant did prepare a proposed order authorizing the sale to Eartleg of the No. 193 and No. 331 leases for \$26,500 each. Settlement of the order was noticed for December 24. At the time of settlement, Channel submitted an order requiring all interested parties to show cause why an order should not be entered denying authority for a sale of the two leases to Eartley and "re-opening competitive bidding" for the two leases. The BJ signed the Channel order to show cause, making it returnable on December 30; he did not sign the order proposed by Wrant (if at that point Grant was still proposing its order).

At the December 30 hearing, Channel said it would bid \$35,000 for No. 193 and \$70,000 for No. 331; a creditors committee counsel appears to have asked that bidding be reopened; Grant does not appear to have taken a position. The BJ ruled that he was "satisfied in the interest of justice and in the estate of W. T. Grant that I open the bidding..." (SM 35). After further inconclusive bidding, the hearing was adjourned to December 31.

On December 31, bidding was resumed by Ertleg and Channel. As to No. 193 the BJ announced that the bidding was over at \$65,200 and the lease would be sold ("awarded") to Channel at that figure. (SM 19) As to No. 331 the BJ announced that the highest bid was that of Channel of \$215,200. Grant was represented at this bidding and submitted orders authorizing Grant to sell the two leases to Channel for the sums indicated. On the same day, December 31, the BJ signed these two orders; they are two of the orders appealed from.

Thereafter Zartleg moved for reargument in respect of the two December 31 orders and for an order "confirming" the same of the two leases to Zartleg for \$26,500 each, the amount bid by Zartleg on December 11. The BJ heard reargument on January 26, 1976. Grant, the debtor, asked for the matter to be left where it was - the two leases had been sold to Channel for a total of \$280,400 instead of to Zartleg for a total of \$43,000. The Creditors Committee also opposed the motion of Zartleg. On March 2, 1976, the BJ filed an order and memorandum opinion, dated March 1, 1976, denying the motion of Zartleg; he said, among other things, that "to deprive Grant's estate of over \$225,000 would be grossly unfair to Grant and its creditors".

This appeal then followed but there was no stay of

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NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In the Matter of

: In Proceedings for an Arrangement

W. T. GRANT COMPANY, :

75 B 1735

Debtor.

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND

CIRCUIT

NOTICE is hereby given that appellant Zartleg Development Corp. ("Zartleg"), hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum Decision and Order of the District Court by the Hon. Inzer B. Wyatt dated May 17, 1976 and entered on or about May 17, 1976 affirming three orders of Bankruptcy Judge Galgay two of which had confirmed the assignment and sale of leases of certain premises (stores Nos. 331 and 193) of the Bankrupt to the Channel Companies, Inc. and a third one of which had denied the motion of Zartleg to reargue such two orders of confirmation.

The parties to the Order appealed from who are to be served with this Notice of Appeal and the names and addresses of their respective attorneys are:

Messrs. Wachtell, Lipton, Rosen & Katz Attorneys for W. T. Grant Company 299 Park Avenue New York, New York 10010

Messrs. Weil, Gotshal & Manges Attorneys for The Creditors' Committee 767 Fifth Avenue New York, New York 10017

Messrs. Taenzer & Friedman Attorneys for Cinnaminson Shopping Center, Inc. Rt. 130 & Riverton Rd. Cinnaminson, New Jersey 08077

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Messrs. Ballon, Stoll & Itzler Co-Counsel to The Creditors Committee 1180 Avenue of the Americas New York, New York 10036

Messrs. Parker, Chapin & Flattau Attorneys for Channel Companies, Inc. 530 Fifth Avenue New York, New York 10036

New York, New York Dated:

June 2 , 1976

COWAN, LIEBOWITZ & LATMAN, P.C.

A Member Thereof

Attorneys for Appellant Zartleg
Development Corp.
200 East 42nd Street

New York, New York 10017

STATE OF NEW YORK) COUNTY OF NEW YORK) SS.: deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 4 - 48 40° ST 1976, August That on the 13th day of APPENDIX deponent personally served the within upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose. true copyes of same with a duly By leaving 1 authorized person at their designated office. _ true copies of same enclosed By depositing true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York. Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses. WACHTELL, LIPTON, ROSEN & KATZ Attorneys for Appellee W. T. Grant Company 299 Park Ave., New York, N. Y. 10010 WEIL, GOTSHAL & MANGES Attorneys for Appellee The Creditors Committee 767 Fifth Ave., New York, N. Y. 10017 BALLON, STOLL & ITZLER Co-Counsel to Appellee The Creditors Committee 1180 Ave. of the Americas, New York, N. Y. 10036 PARKER, CHAPIN & FLATTAU Attorneys for Appellee Channel Companies, Inc. 530 Fifth Ave., New York, N. Y. 10036 Sworn to before me this August _ day of

MICHARI DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 19

STATE OF NEW YORK) COUNTY OF NEW YORK) SS.:

JULIO VALLEJO, JR. deposes and says that deponis over 18 years of age and Brooklyn, N. Y.	being duly sworn, party to the action, 2742 Pitkin Ave.,		
That on the 13th day deponent personally served	of August	APPENDIX	, 19 <u>76</u> ,

upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

true copies of same with a duly By leaving authorized person at their designated office.

By depositing 1 true/copy of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.

Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

> TAENZER & FRIEDMAN Attorneys for Appellee Cinnaminson Shopping Center, Inc. Rt. 130 & Riverton Rd. Cinnaminson, New Jersey 08077

Sworn to before me this

13th day of August

1976.

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
County
Desaution Expires March 30, 191